

CALIFORNIA STATE BOARD OF EQUALIZATION

SUMMARY DECISION UNDER REVENUE AND TAXATION CODE SECTION 40

In the Matter of the Petition for Reassessment of
the 2023 Unitary Value
for:)

Appeal No. SAU 23-018

**LIBERTY UTILITIES (CALPECO
ELECTRIC), LLC
(0163)**)

Nonappearance Hearing Date:
December 12, 2023¹

Petitioner)

Representing the Parties:

For the Petitioner:

Daniel Tobias, Authorized Agent
Tobias & Associates, Inc.

Christopher Tobias, Authorized Agent
Tobias & Associates, Inc.

For the Respondent:

Richard Moon, Attorney V
Attorney for State-Assessed Properties Division

Michelle Cruz, Principal Property Appraiser
State-Assessed Properties Division

Appeals Attorney:

Sarah J. Wilkman, Attorney III

VALUES AT ISSUE

	Value	Penalty	Total
2023 Board-Adopted Unitary Value	\$266,600,000	\$0	\$266,600,000
Petitioner’s Requested Unitary Value	\$172,913,950	\$0	\$172,913,950
Respondent’s Appeal Recommendation	\$266,600,000	\$0	\$266,600,000
Respondent’s Revised Recommendation	\$262,500,000	\$0	\$262,500,000
Board Determined Value	\$262,500,000	\$0	\$262,500,000

¹ At the nonappearance hearing, the Board partially granted the petition as to Issue 6 and denied the petition as to all other issues, by a unanimous vote of the Members present, with Chair Vazquez, Vice-Chair Lieber, Member Schaefer, Member Gaines, and Controller Cohen voting aye.

Factual Background

Liberty Utilities (Calpeco Electric), LLC (Liberty or Petitioner) provides regulated electricity, water, and natural gas utility services to over 1 million customer connections, primarily in North America. Its California service areas include Coleville, Floriston, Loyalton, Markleeville, North Lake Tahoe, Portola, South Lake Tahoe, Topaz Lake, Truckee, Verdi, Walker, and Woodfords.

The 2023 Board-adopted unitary value for Petitioner of \$266,600,000 was based upon 75 percent reliance on the Historic Cost New Less Depreciation (HCLD) value indicator and 25 percent reliance on the Capitalized Earning Ability (CEA) value indicator.

On appeal, Petitioner contends that their 2023 Board-adopted unitary value is overstated and requests a revised unitary value of \$172,913,950. Throughout the appeals process, Petitioner and the State-Assessed Properties Division (SAPD or Respondent) each submitted briefing, evidence, and argument throughout the appeals process, including at the appeals conference², to support their positions on the six issues raised in this petition.

After a review of Petitioner's submitted evidence and argument in response to an information exchange after the Appeals Conference, Respondent revised its recommended unitary value, supporting a reduction of \$4,100,000 (described in greater detail in issue 6).

Legal Issues 1 and 2: Whether Petitioner Has Shown that Respondent Improperly Placed 75 Percent Reliance on the Historical Cost Less Depreciation (HCLD) Value Indicator and 25 Percent Reliance on the Capitalized Earning Ability (CEA) Value Indicator, and, If So, Whether Petitioner Has Shown Additional Reliance on the CEA Value Indicator is Appropriate.

Findings of Fact and Related Contentions

Petitioner asserts Respondent's 75 percent HCLD reliance and 25 percent CEA reliance reflects a weighted average that does not reflect industry and market conditions and asserts that the value indicator reflects non-recoverable costs in the general rate case. Specifically, Petitioner asserts that Respondent's assignment of 25 percent to the CEA approach is incorrect as the subject property's

² The appeals conference was held on November 8, 2023.

1 taxable CEA income has decreased by 5.86 percent and the Petitioner's 2023 Board-adopted unitary
2 value increasing by 23.65 percent when compared to the 2022 value indicates that Respondent has not
3 reconciled the overall differences in the two approaches. Petitioner further argues that the difference
4 between the two value indicators may signify obsolescence or that other problems exist in the property,
5 and in this instance its HCLD value indicator is 46.5744 percent greater than its CEA value indicator.
6 Accordingly, Petitioner asserts that this shows that the CEA value approach should be given more
7 weight. Based on the foregoing rationales, Petitioner requests that the Board instead utilize 100 percent
8 reliance on the income approach instead of Respondent's 75 percent reliance on the HCLD approach
9 and 25 percent reliance on the income approach.

10 Respondent has conducted its appraisal by calculating and reconciling the HCLD and CEA value
11 indicators, consistent with relevant law and appraisal guidance.³ Respondent notes significant
12 differences in the two value approaches can and may occur, as stated in Assessors' Handbook, section
13 501 (AH 501) *Basic Appraisal*, without compromising the validity of the underlying value approach,
14 quoting:

15 The reconciliation of value indicators from the separate approaches to value and the
16 resulting final value estimate is the next step in the appraisal process. Theoretically, the
17 approaches to value should produce identical value indicators. In practice, however, this
18 is rarely the case, and significant differences may occur. To produce a final value
19 estimate, the appraiser reconciles the indicators from each approach utilized. Value
20 indicators should be reconciled considering: (1) the appropriateness of the approach
21 given the purpose of the appraisal; and (2) the adequacy and reliability of the data
22 available to perform the appraisal. The appraiser should examine and reconcile all value
23 indicators.

24 (AH 501, p. 62.) Specifically, Respondent notes that when analyzing and reconciling value indicators to
25 arrive at a final value estimate, the criteria described in AH 502, *Advanced Appraisal*, should be
26 considered:

27 The final value estimate is an appraiser's opinion of value. There is no mathematical formula or
28 statistical technique to which the appraiser can ultimately refer in order to reach the final value
estimate. It is an opinion that should be based on the appraiser's application of generally
accepted appraisal methods and procedures.

It is generally inappropriate to use the arithmetic mean of the value indicators as the final value
estimate. Simply calculating an average implies that all the value indicators have equal validity.

³ Assessing officers are presumed to have properly performed their duties. (Evid. Code, § 664.)

1 While this may occur in certain instances, it is usually not the case. Appraisers must follow Rule⁴
2 3, noted above, and consider the appropriateness of the value approaches, the relative accuracy
3 of the value indicators, and the quantity and quality of the data available when reconciling value
4 indicators to reach the final value estimate.

5 (AH 502, p. 111.)

6 Respondent notes the HCLD approach is a reliable indicator of market value for closely
7 regulated public utilities, like Petitioner, as HCLD, with some modification, approximates the rate base
8 that regulators use in establishing revenue requirements. (*Unitary Valuation Methods (UVM)* (2003), p.
9 1.) HCLD reflects the market value contribution of all taxable property including the depreciated
10 historical cost of plant in service, possessory interests, construction work in progress, and materials and
11 supplies, and is:

12 A generally accepted method for valuing property interests of rate base regulated utilities,
13 whether centrally or locally assessed, is by use of the historical cost approach. Certain industries
14 have been and continue to be subject to rate base regulation, as a result of which authorized
15 earnings, or rates of return, are set by regulators and measured by rate base. Under Rule 3(d), the
16 assessing agency shall consider as relevant to value the amount actually invested in the property
17 or the amount invested less depreciation, if the income from the property is regulated by law and
18 the regulatory agency uses historical cost, historical cost less depreciation (HCLD), or trended
19 original cost as a rate base. Thus, the historical cost approach is considered relevant for
20 estimating the market value of public utility properties depending upon regulatory influences.

21 (AH 502, p. 146.) Further, HCLD is,

22 one of the more important indicators of value for closely regulated public utilities. The
23 general practice of the California Public Utilities Commission (CPUC) and most other
24 regulatory agencies is to use historical or original cost less depreciation (with various
25 adjustments) as the rate base. The regulatory agencies establish a rate base and a rate of
26 return; utilities are permitted to earn at this established rate on the rate base.

27 (*UVM*, p. 1.)

28 Respondent also notes that Property Tax Rule 8, subdivision (a), indicates the CEA value
indicator is appropriate to use when the property has “an established income stream...,” and here,
Petitioner has an established income stream.

Respondent states that consistent with the relevant HCLD and CEA value indicator authorities
and considerations, and Petitioner being a utility, rate regulated by the CPUC, Respondent considered

⁴ All references to Property Tax Rule or Rules are to sections of title 18 of the California Code of Regulations.

1 HCLD to be the most reliable indicator of value, placing 75 percent reliance on the indicator.
2 Respondent notes that due to Petitioner’s significant growth in actual and planned capital expenditures
3 to replace and expand distribution and transmission infrastructure, and to construct and replace
4 generation assets, Petitioner is experiencing “regulatory lag” and the relative reliance on the indicators
5 corresponds accordingly.⁵ As such, Respondent’s maintains it is appropriate to weight the CEA value
6 indicator 25 percent.

7 Applicable Law and Appraisal Principles

8 Burden of Proof

9 Assessing officers are presumed to have properly performed their duties. (Evid. Code, § 664.)
10 Therefore, Petitioner has the burden of showing that the assessment is incorrect or illegal. (*ITT World*
11 *Communications v. Santa Clara* (1980) 101 Cal.App.3d 246; see also Cal. Code Regs., tit. 18, § 5541,
12 subd. (a).)

13 Value Standard

14 Revenue and Taxation Code section 110, subdivisions (a) and (b) define “full cash value” or
15 “fair market value” for California property tax assessment purposes.

16 HCLD Approach to Value

17 Property Tax Rule 3, subdivision (d) provides the HCLD approach to value shall be considered
18 “[i]f the income from the property is regulated by law and the regulatory agency uses historical cost or
19 historical cost less depreciation as the rate base, the amount invested in the property or the amount
20 invested less depreciation computed by the method employed by the regulatory agency.” HCLD, with
21 some modification, approximates the rate base that regulators use in establishing revenue requirements.
22 (See *UVM*, p. 1.) HCLD reflects the market value contribution of all taxable property including the
23 depreciated historical cost of plant in service, possessory interests, construction work in progress, and
24 materials and supplies. (AH 502, p. 146.) HCLD is,

25 one of the more important indicators of value for closely regulated public utilities. The general
26 practice of the California Public Utilities Commission (CPUC) and most other regulatory
agencies is to use historical or original cost less depreciation (with various adjustments) as the

27 _____
28 ⁵ Regulatory lag is the time delay between a utility’s costs and any adjustment CPUC may make to the rate base to account for these costs. This process creates a lag between the time the assets are placed in service and the time the company begins to get a recover of and recovery on the assets.

1 rate base. The regulatory agencies establish a rate base and a rate of return; utilities are
2 permitted to earn at this established rate on the rate base.

3 (UVM (2003), p. 1.)

4 Further, Board guidance states,

5 Appraisal depreciation in the form of obsolescence may be present in utility property and
6 deducted from HCLD. Such deductions may be proper when the utility's economic income has
7 been impaired and the rate or tariff-setting regulators have recognized such impairment.

8 (UVM, p. 1.)

8 **Income Approach to Value**

9 Property Tax Rule 8, subdivision (a), states that “the income approach is used in conjunction
10 with other approaches when the property under appraisal is typically purchased in anticipation of a
11 money income and either has an established income stream or can be attributed a real or hypothetical
12 income stream by comparison with other properties.” Subdivision (b) describes the income approach to
13 value as the valuation method whereby, “an appraiser values an income property by computing the
14 present worth of a future income stream. This present worth depends upon the size, shape, and duration
15 of the estimated stream and upon the capitalization rate at which future income is discounted to its
16 present worth.” Subdivision (c) provides that “the amount to be capitalized is the net return which a
17 reasonably well-informed owner and reasonably well-informed buyers may anticipate on the valuation
18 date that the taxable property existing on that date will yield under prudent management and subject to
19 legally enforceable restrictions as such persons may foresee as of that date.”

20 **Reconciliation of Value Indicators**

21 Property Tax Rule 3 requires that, in estimating value, the assessor shall consider one or more
22 of the approaches to value “as may be appropriate for the property being appraised,” which includes the
23 comparative sales approach, the cost approach (e.g., HCLD valuation methodology), or the income
24 approach (CEA valuation methodology). The appropriateness of an approach is often related to the type
25 of property being appraised and the available data. (AH 502, p. 109.) In addition, the validity of a value
26 indicator will depend upon the accuracy of data and adjustments made to the approach. That is, the
27 accuracy of a value indicator depends on the amount of available comparable data, the number and type
28 of adjustments, and the dollar amount of adjustments. Finally, if a large amount of comparable data is

1 available for a given approach, the appraiser may have more confidence in that approach. For example,
2 if income, expense, and capitalization rate data can be obtained from many properties comparable to the
3 subject, the appraiser may attribute significant accuracy to the income approach. The greatest reliance
4 should be placed on that approach or combination of approaches that best measures the type of benefits
5 the subject property yields. The final value estimate reflects the relative weight that the appraiser
6 assigned, either implicitly or explicitly, to each approach. (AH 502, p. 112.)

7 Analysis and Disposition

8 Respondent is presumed to have correctly determined the value of the property at issue, and
9 Petitioner bears the burden of proving otherwise. Here, Petitioner contends that because Respondent's
10 calculated HCLD value indicator exceeds the CEA value indicator by 46.5744 percent, Respondent's
11 2023 Board-adopted unitary value is flawed, as the various approaches to value must yield
12 approximately the same results, and differences of such a magnitude indicate that the value indicators
13 were not reconciled or do not otherwise reflect market conditions. However, as Board guidance and
14 Respondent note, significant differences may occur in validly calculated indicators. While Petitioner
15 advances various arguments, Respondent contends, in light of all available evidence, it was reasonable
16 and appropriate to place 75 percent reliance on the HCLD value indicator, which reflects the
17 consideration of many factors, including: that the HCLD value indicator is a reliable indicator of value
18 for closely regulated public utilities like Petitioner, because HCLD, with some modification,
19 approximates the rate base that regulators use in establishing revenue requirements; Petitioner's
20 "regulatory lag"; Petitioner's established income stream; and consistency with Property Tax Rules 3, 6,
21 and 8, as well as relevant Board guidance.

22 We concur with the Respondent and find no error with the reconciliation of Petitioner's 2023
23 unitary value. Further, based on the evidence and arguments submitted to the record, we find that
24 Petitioner has not shown specific evidence or argument to prove that its HCLD indicator is impaired, nor
25 has Petitioner shown that its CEA value indicator must be granted additional weight. We note
26 Petitioner's assertion that the difference in the HCLD and CEA value indicators being attributed to
27 obsolescence is unsupported. Similarly, Petitioner's assertion that Respondent's appraisal judgement and
28 valuation approach is flawed, without providing any specific evidence, is similarly unsupported. We find

1 Respondent’s appraisal judgment to place 75 percent reliance on the HCLD value indicator and 25
2 percent reliance on the CEA value indicator was appropriate and reflects the consideration of a variety
3 of factors. Accordingly, we find no error or illegality within Petitioner’s 2023 unitary value as to these
4 issues and we further find that Petitioner has not met their burden of proof as to these issues.
5

6 **Legal Issue 3: Whether Respondent Must Adjust the CEA Value Indicator to Account for**
7 **Intangible Assets, such as its Trained and Experienced Workforce in Place and Management**
8 **Expenses.**

9 **Findings of Fact and Related Contentions**

10 Petitioner claims that deductions from the CEA value indicator must be made for its intangible
11 assets and rights, such as its trained and experienced workforce and management expenses and other
12 self-created intangible assets. Petitioner argues that its operations workforce saves operating cost,
13 downtime, and outages, as well as other transitional issues and difficulties in other investor-owned
14 utility sales. With respect to management fees, Petitioner cites to AH 502 and *SCH Half Moon Bay v.*
15 *San Mateo County* (Hereinafter *SCH Half Moon Bay*), (2014) 226 Cal.App.4th, 471, for the proposition
16 that they must be deducted from operating income prior to capitalization. Petitioner asserts these
17 intangible assets have value that are not captured within its financials, and must be deducted, citing to
18 *SCH Half Moon Bay*.

19 Respondent notes Property Tax Rule 8 does not require a deduction be made for a business with
20 only prudent management and a reasonably skillful workforce, since those levels of expertise must be
21 assumed for the necessary and productive use of the property. Respondent further points out that no
22 authorities, including those cited by the Petitioner –Assessors Handbook section 502, *Advanced*
23 *Appraisal*, (AH 502), pp. 162-163 and *SHC Half Moon Bay*– are to the contrary. Under relevant
24 guidance, Respondent notes that for the requested deduction to be proper, Petitioner must show that its
25 “trained and experienced workforce” and “management fees” produced an income superior to that which
26 would have been produced with an ordinary workforce and management. Respondent further notes that
27 it would be difficult for Petitioner to make such a showing because Petitioner’s income is rate-regulated
28

1 and already assumes prudent management. Ultimately, Respondent contends that Petitioner has made no
2 such factual showing to support the requested deduction.

3 Applicable Law and Appraisal Principles

4 Burden of Proof

5 See Issues 1 & 2, Applicable Law, p. 5.

6 Value Standard

7 Revenue and Taxation Code section 110, subdivisions (a) and (b) define “full cash value” or
8 “fair market value” for California property tax assessment purposes. Subdivisions (d) and (e) set forth
9 the limitations on taxation of intangible value and provide in part that:

10 (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:

11 (1) The value of intangible assets and rights relating to the going concern value of a
12 business using taxable property shall not enhance or be reflected in the value of the taxable
property.

13 (2) If the principle of unit valuation is used to value properties that are operated as a unit
14 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.

15 * * *

16 (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.

17
18 Revenue and Taxation Code section 212, subdivision (c) additionally states:

19 (c) Intangible assets and rights are exempt from taxation and, except as otherwise provided
20 in the following sentence, the value of intangible assets and rights shall not enhance or be
reflected in the value of taxable property. Taxable property may be assessed and valued by
21 assuming the presence of intangible assets or rights necessary to put the taxable property
to beneficial or productive use.

22 Further, Property Tax Rule 2, subdivision (a) states that “in addition to the meaning ascribed to them in
23 the Revenue and Taxation Code, the words “full value”, “full cash value”, “cash value”, “actual value”
24 and “fair market value” mean the price at which a property, if exposed for sale in the open market with
25 a reasonable time for the seller to find a purchaser, would transfer for cash or its equivalent under
26 prevailing market conditions between parties who have knowledge of the uses to which the property
27 may be put, both seeking to maximize their gains and neither being a position to take advantage of the
28 exigencies of the other.”

1 **Income Approach to Value**

2 See Issues 1 & 2, Applicable Law, p. 6.

3 Additionally, subdivision (c) of Rule 8 provides:

4 The amount to be capitalized is the net return which a reasonably well informed owner and
5 reasonably well informed buyers may anticipate on the valuation date that the taxable property
6 existing on that date *will yield under prudent management* and subject to such legally
7 enforceable restrictions as such persons may foresee as of that date.

8 (Property Tax Rule § 8, subd. (c), italics added.)

9 Further, subdivision (e) of Rule 8 states, in part, that:

10 When income from operating a property is used, sufficient income shall be excluded to provide a
11 return on working capital and other nontaxable operating assets and to compensate unpaid or
12 underpaid management.

13 (Property Tax Rule § 8, subd. (e).)

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

15 In *Elk Hills*, the California Supreme Court held that the Board directly assessed intangible value
16 by assessing the value of the taxpayer's emission reduction credits (ERCs) in violation of Revenue and
17 Taxation Code section 110 when it added the replacement cost of the ERCs to the power plant's taxable
18 value. In that case, the Court examined the property taxation of intangible assets under the cost and
19 income approaches to value. The cost approach is not at issue here.

20 In its analysis, the Court explained:

21 [Revenue and Taxation Code] [s]ections 212(c) and 110(d) prohibit the direct taxation of certain
22 intangible assets and rights However, in assessing taxable property under section 110(e), the
23 Board may "assum[e] the presence of intangible assets or rights necessary to put the taxable
24 property to beneficial or productive use."

25 With respect to the income approach to value, the Court states the taxpayer must articulate "a
26 basis for attributing to the [proffered intangible rights or assets] a separate stream of income related to
27 an enterprise activity," in order to impute to the income stream "some independent value that would be
28 deducted from the total income generated by the taxable property." (*Id.* at p. 619.) This is because,
"under an income stream approach, not all intangible rights have a quantifiable fair market value that
must be deducted." (*Id.* at p. 617.)

To illustrate the analysis that must occur in each case, the Court acknowledged that there are two
distinct lines of cases relating to intangibles where an operating property is being valued by use of the

1 CEA approach. (*Ibid.*) In the first line of cases, “courts have upheld income-based assessments that
2 properly assumed the presence of intangible assets necessary to the productive use of taxable property
3 without deducting value for intangible assets.” (*Id.* at p. 618.) In the second line of cases, courts
4 “disapproved assessments that failed to attribute a portion of a business’s income stream to the
5 enterprise activity that was directly attributable to the value of intangible assets and deduct that value
6 prior to assessment.” (*Ibid.*) As summarized by the Court:

7 These cases illustrate the principle that although assessors may assume the presence of
8 intangibles when considering the income stream derived from taxable property that is put
9 to beneficial or productive use, the value of intangibles that directly enhance that income
10 stream cannot be subsumed in the valuation of taxable property, and must be deducted
11 from the unit prior to assessment.

11 (*Ibid.*)

12 Thus, the Court differentiated indirect intangibles (intangible assets that indirectly enhance
13 the value of tangible property and the income stream produced by the tangible property by
14 authorizing the beneficial and productive use of the tangible property) from direct intangibles
15 (intangible business or enterprise assets that directly enhance the business income stream but are
16 not necessary to the beneficial and productive use of the tangible property). (*Id.* at pp. 617-618.) In
17 short, the cases indicate no deduction from the income stream should be made for indirect
18 intangibles, while a deduction from the income stream for direct intangibles may occur when the
19 taxpayer proves that the direct intangibles have created a separate stream of income or has
20 enhanced the income stream above that which ordinarily would be reasonably expected from the
21 property operating at highest and best use under normally prudent management. (See Property Tax
22 Rule 8, subd. (c).)

23 Accordingly, the *Elk Hills* Court determined that if a quantifiable value of intangibles that
24 *directly enhance* an income stream exist, the attributable value cannot be subsumed in the valuation of
25 taxable property and must be deducted from the unit prior to assessment. Rule 8 sets forth how to
26 determine when an income stream has been enhanced. Therefore, to properly determine the fair market
27 value of operating real property using the income method, a direct intangible asset may only reduce net
28 operating income for property tax assessment purposes if it is demonstrated that the income stream

1 produced with the intangible asset is greater than the income stream produced when the property
2 operates at its highest and best use under normally prudent management.

3 Specifically, the Court found that as “[t]here was no credible showing that there is a separate
4 stream of income related to enterprise activity or even a separate stream of income at all that is
5 attributable to the ERCs” in the evidence proffered by *Elk Hills*, “the Board was not required to deduct a
6 value attributable to the ERCs under an income approach.” (*Elk Hills, supra*, 57 Cal.4th at p. 602.)

7 Analysis and Disposition

8 Respondent is presumed to have correctly determined the value of the property at issue, and
9 Petitioner bears the burden of proving otherwise. The issue here is whether Petitioner has shown that
10 Respondent erred by disallowing Petitioner’s requested deduction from the CEA value indicator for its
11 trained and experienced workforce in place and management expenses.

12 Consistent with Rule 8 and *Elk Hills*, we note there is no deduction from the income stream for
13 intangibles that indirectly enhance the value of the tangible property; further, we note while there may
14 be a deduction for intangibles that directly enhance the income stream if the taxpayer shows that such
15 intangibles have created a separate stream of income or an enhanced income stream to an extent greater
16 than would be reasonably expected from the property at its highest and best use under prudent
17 management pursuant to Property Tax Rule 8, here, Petitioner has made no such showing.

18 Here, Petitioner’s argument rests upon an argument that Respondent improperly included *direct*
19 intangible assets (i.e., its trained/experienced workforce and management). However, as Respondent
20 points out, for this requested deduction to be proper, Petitioner must show that its “trained and
21 experienced workforce” and “management fees” produced an income for Petitioner superior to that
22 which would have been produced with an ordinary workforce and management, as presumed by Rule 8
23 and the CEA approach. However, we note Petitioner has not put forth any specific argument or evidence
24 to support that their workforce and management were both underpaid and overproducing of income,
25 such that it was superior to that which would have been produced with an ordinary prudent workforce
26 and management. Accordingly, we find that Petitioner has not met its burden of proof as to this issue.

27 /

28 /

1 **Legal Issue 4: Whether Respondent Failed to Include a Replacement Allowance in the CEA**
2 **Approach.**

3 **Factual Findings and Contentions**

4 Petitioner asserts that Respondent has made no allowance for replacement and/or reserve costs.
5 Petitioner provides no new or specific factual evidence to support the requested adjustment.

6 Respondent notes Petitioner's 2023 Board-adopted unitary value already includes a \$11,287,288
7 capital replacement allowance for lien date 2023. Accordingly, Respondent contends it properly treated
8 replacement costs.

9 **Applicable Law and Appraisal Principles**

10 **Burden of Proof**

11 See Issues 1 & 2, Applicable Law, p. 5.

12 **Value Standard**

13 See Issues 1 & 2, Applicable Law, p. 5.

14 **Income Approach**

15 See Issues 1 & 2, Applicable Law, p.6.

16 **Replacement Allowance in the CEA Approach**

17 "A replacement allowance (also called reserve for replacement) is an expense to replace
18 components of an improvement that must be replaced at least once, and often several times, during the
19 improvement's economic life." (AH 502, p. 73.)

20 **Analysis and Disposition**

21 Respondent is presumed to have correctly determined the value of the property at issue, and
22 Petitioner bears the burden of proving otherwise. The issue here is whether Petitioner has shown that
23 Respondent erred by failing to include a replacement allowance in the CEA value indicator.

24 We note that consistent with relevant appraisal guidance (AH 502), Respondent has utilized a
25 capital replacement allowance of \$11,287,288 in Petitioner's 2023 Board-adopted unitary value. While
26 Petitioner appears to claim it was not included, Petitioner has not put forth any specific argument or
27 evidence to support its claim or to support any further adjustment as to this issue. Accordingly, we find
28 that Petitioner has not met its burden of proof as to this issue.

1 **Legal Issue 5: Whether Respondent Erred by Including \$63 Million of Wildfire Mitigation Capital**
2 **Expenditures in the HCLD Value Indicator or Otherwise Failed to Capture Obsolescence.**

3 **Factual Findings and Contentions**

4 Petitioner requests that \$63 million in capital purchases made during calendar year 2022 be
5 removed from the HCLD value indicator because these expenditures were made to satisfy CPUC-issued
6 wildfire mandates⁶ and would not otherwise have been purchased. (Petition, Exhibit 2021 v. 2022
7 Balance Sheet.) Petitioner notes to comply with the mandate, it responded with a plan to replace all
8 lines, poles, conduits, and towers with a heavier, more fire retardant suppression material. As the lines
9 are heavier, Petitioner asserts it requires new poles, conduits, and towers to support the replacement.
10 Petitioner asserts that the replacement of old lines, poles, conduits, and towers, mean the old materials
11 suffer from significant functional and economic obsolescence, and this should be acknowledged, as
12 Board guidance recommends. Petitioner requests that the Board remove the entire \$63 million in capital
13 expenditures from its valuation to acknowledge the asserted additional obsolescence.

14 Further, Petitioner asserts that because of the legally mandated capital purchases, the old
15 property suffers from obsolescence and that “the replacements are not eligible for rate base relief or
16 recovery in the general rate case. The entire economic and financial burden falls on Liberty with no
17 compensation or relief from the ratepayers.”

18 Respondent contends no adjustment for obsolescence is appropriate for a number of reasons.
19 First, it is unclear why a replacement of old property results in that property suffering from
20 obsolescence, as such property is properly retired and removed from the books and, thus, the HCLD
21 value indicator. Second, Respondent contends that even if obsolescence existed in the old property, it is
22 unreasonable that such obsolescence would be exactly equal to the value of the new property purchased.
23 Third, Petitioner has provided no evidence that its \$63 million capital expenditure was all due to the
24 CPUC-issued mandate (as opposed to, for example, regular replacement of aged property or planned
25 wildfire mitigation). Respondent notes that such detail is particularly important since Petitioner’s 2023
26 Wildfire Mitigation Plan reports that its actual 2022 spending was approximately \$50 million⁷ and its
27

28 ⁶ Petitioner cites to OIR Rulemaking 18-10-007, dated 10/25/18. (Petition, p. 7.)

⁷ Liberty 2023 Wildfire Mitigation Plan, p. 30

< https://california.libertyutilities.com/uploads/2023-05-19_Liberty_2023_WMP_R1.pdf> [as of November 30, 2023].

1 Amended 2022 Risk Spending Accountability Report (RSAR)⁸ suggests that its spending on safety,
2 reliability, and maintenance was approximately \$67 million, which was not all for the purposes of
3 wildfire mitigation. Finally, Respondent notes that Petitioner has not provided evidence that the new
4 property is not eligible for rate base inclusion. (Citing to Petitioner’s General Rate Case decision⁹ as
5 well as its RSAR¹⁰, which indicate that its capital expenditures were authorized).

6 Additionally, Respondent points out that importantly, even if the new property is not rate base
7 eligible, this does not automatically mean the property has no value for property tax purposes.
8 Respondent notes that whether property is or is not included in the rate base of a regulated utility is not
9 solely determinative of whether it must or must not be included in HCLD, referencing AH 502. Further,
10 Respondent points out that if these costs are mandated, without having purchased those assets, Petitioner
11 (or any potential purchaser) would not be compliant with the mandate.

12 **Applicable Law and Appraisal Principles**

13 **Burden of Proof**

14 See Issues 1 & 2, Applicable Law, p. 5.

15 **Value Standard**

16 See Issues 1 & 2, Applicable Law, p. 5.

17 **HCLD Approach to Value**

18 See Issues 1 & 2, Applicable Law, p. 6.

19 **Depreciation and the Cost Approach**

20 In general, the cost approach recognizes three types of depreciation: physical deterioration,
21 functional obsolescence, and external, or economic, obsolescence, through the application of the Board’s
22 replacement cost new trend factors and “percent” good factors. Obsolescence may occur when property
23 is outmoded (functional obsolescence) or when some event has substantially diminished the future
24 earning power of the property (economic obsolescence). (See Assessors’ Handbook section 501, *Basic*
25

26 ⁸ Amended 2022 Risk Spending Accountability Report (RSAR), p. 4,
<<https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M508/K422/508422802.PDF>> [as of November 30, 2023].

27 ⁹ Decision 23-04-043, p. 22-23,
<<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M507/K581/507581365.PDF>>

28 [as of November 30, 2023]

¹⁰ See fn. 7, Liberty 2023 Wildfire Mitigation Plan at p. 4.

1 *Appraisal* (January 2002), pp. 80-83.) Functional obsolescence is the loss of value in a property caused
2 by the property's loss of capacity to perform the function for which it was intended. (*Id.* at p. 81.)
3 Economic obsolescence is the diminished utility of a property due to adverse factors external to the
4 property being appraised and is incurable by the property owner. (*Id.* at p. 82.) The existence of any
5 additional or extraordinary obsolescence must be supported with verifiable documentation and evidence,
6 consistent with Board Guidelines. (See Property Tax Rule 6, subds. (d) & (e); Assessors' Handbook
7 section 502, *Advanced Appraisal* (Reprinted January 2015) (AH 502), pp. 20-21; *Unitary Valuation*
8 *Methods*, (2003), p. 30; and Cal. Bd. of Equalization, *Guidelines for Substantiating Additional*
9 *Obsolescence*, at p. 1.)

10 **Analysis and Disposition**

11 Respondent is presumed to have correctly determined the value of the property at issue, and
12 Petitioner bears the burden of proving otherwise. The issue here is whether Petitioner has shown that
13 Respondent erred by including \$63 million in capital expenditures for wildfire mitigation, or otherwise
14 erred by not capturing obsolescence to its property.

15 We note that while Petitioner claims it should not be assessed on its \$63 million of capital
16 expenditures for lien date 2023, Petitioner has provided no legal or appraisal authority to support its
17 requested treatment. Further, the Board notes that consistent with relevant appraisal guidance and Board
18 Guidelines, the existence of any additional or extraordinary obsolescence must be supported with
19 verifiable documentation and evidence. Here, Petitioner has not put forth any specific argument or
20 evidence to support its claims of uncaptured obsolescence. Accordingly, based on the evidence and
21 arguments submitted to the record, we find that Petitioner has not met its burden of proof as to this issue.
22

23 **Legal Issue 6: Whether Respondent Removed Petitioner's Retired Assets from the HCLD**

24 **Approach**

25 **Factual Summary of the Issue, Analysis, and Conclusions**

26 At the Appeals Conference, Petitioner asserted that the value of retired assets being replaced
27 with its capital expenditures were still included in the Respondent calculated HCLD value indicator.
28

1 Respondent indicated that if true, such asset costs were appropriately removable in the HCLD value
2 indicator, but that Respondent needed verifiable assessee data to support such an adjustment.

3 After the Appeals Conference, the appeals attorney facilitated an information exchange.
4 Petitioner submitted data on November 15, 2023. Respondent reviewed the submission and engaged in
5 clarifications thereafter. On November 28, 2023, Respondent confirmed that Petitioner's HCLD value
6 indicator should be adjusted by \$5,393,173 to remove the value of assets that were removed physically
7 from Petitioner's infrastructure and were disposed of but had not been removed yet from the HCLD.
8 (Respondent Email Nov. 28, 2023.) Respondent notes that this recommended adjustment results in a
9 reduction to the Petitioner's 2023 Board-adopted unitary value of \$4,100,000. (*Ibid.*)

10 Accordingly, based on the evidence and arguments submitted, we find that Petitioner has met its
11 burden of proof as to this issue, and that Respondent's recommended adjustment is supported by
12 relevant law and appraisal principles applied to the evidence submitted in this petition.

13 DECISION

14 Accordingly, the 2023 petition for reassessment is granted in part, reducing Liberty Utilities,
15 LLC's 2023 unitary value by \$4,100,000 due to the verifiable evidence submitted in response to issue 6,
16 and denied as to all other issues.*

17 Antonio Vazquez, Chair

18 Sally J. Lieber, Vice Chair

19 Ted Gaines, Member

20 Mike Schaefer, Member

21 Malia M. Cohen, Controller

22
23
24
25 *This decision was rendered in Sacramento, California on December 12, 2023. The summary decision
26 document memorializing this decision was approved on February 21, 2024, in Sacramento, California.