This Tax Commission order was appealed and then settled. The Parties to the appeal have agreed to the redaction of this Commission Order which includes the redaction of the items vacated due to the settlement.

04-0820 & 05-0818
CENTRALLY ASSESSED PROPERTY
TAX YEARS: 2004 & 2005
SIGNED: 06-11-2007
POSTED: 04-16-2013

BEFORE THE UTAH STATE TAX COMMISSION

RURAL COUNTY, et al.,	)	
	)	**FINDINGS OF FACT, CONCLUSIONS**
Petitioners,	)	**OF LAW, AND FINAL DECISION**
	)	
v.	)	Appeal Nos. 04-0820 & 05-0818
	)	
PROPERTY TAX DIVISION OF THE	)	Account No. #####-1
UTAH STATE TAX COMMISSION	)	Tax Type: Centrally Assessed Property
ex rel. RESPONDENT,	)	Tax Years: 2004 and 2005
	)	
	)	Judge: Chapman
Respondent.	)	

This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. The rule prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. However, pursuant to Utah Admin. Rule R861-1A-37 the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this order, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.

Presiding: Pam Hendrickson, Commission Chair
Marc B. Johnson, Commissioner
D'Arcy Dixon Pignanelli, Commissioner
Kerry R. Chapman, Administrative Law Judge

Appearances: For Petitioner: PETITIONER REP. 1, Attorney at Law
PETITIONER REP. 2
For Respondent: RESPONDENT REP. 1, Assistant Attorney General
RESPONDENT REP. 2, Assistant Attorney General
RESPONDENT REP. 3, from Property Tax Division
RESPONDENT REP. 4, from Property Tax Division
For RESPONDENT: RESPONDENT REP. 5, Attorney at Law
RESPONDENT REP. 7, General Counsel, RESPONDENT

RESPONDENT REP. 7, from RESPONDENT
RESPONDENT REP. 8

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission from appeals filed by RURAL COUNTY, et al. (the affected "Counties") to contest Property Tax Division's (the "Division") 2004 and 2005 assessments of property owned by RESPONDENT ("RESPONDENT"). A Formal Hearing was held on September 18-21, 2006 ("Formal Hearing") to determine the fair market value of RESPONDENT's property for the two tax years at issue. In December 2006, each of the parties submitted a post-hearing Proposed Findings of Fact, Conclusions of Law, and Final Decision.

A prior Formal Hearing was held in these matters on June 8, 2005 ("2005 Hearing"). The Counties raised the bifurcated issue of whether the assessed value of RESPONDENT's property for 2004 and 2005 must be determined in accordance with methodology set forth in a Settlement Agreement ("Agreement"), which was executed by all parties in this matter in March 1998 and approved by the Commission on April 24, 1998. At the 2005 Hearing, the Counties argued that use of the Agreement valuation methodology to assess RESPONDENT's property was invalid for several reasons. One of the Counties' arguments was that the Agreement methodology was in conflict with the Commission's subsequent adoption of Utah Admin. Rule R884-24P-62 ("Rule 62"), effective January 1, 1999, which established preferred methodologies to value unitary properties that differed from the methodology set forth in the Agreement.[1]

In its January 11, 2006 Order ("2006 Order"), the Commission agreed with the Counties and found that the adoption of Rule 62 "nullified" the required use of the Agreement methodology. The Commission further ruled that:

> In accordance with Section (D)(2)(a) [of Rule 62], the Division will be expected to demonstrate at the valuation hearing why it deviated from Rule 62; i.e.,

[1] January 11, 2006 Order at p. 5.

> demonstrate why the settlement valuation methodology produces a more accurate estimate of RESPONDENT's fair market value than the value that would have been produced with the preferred methods as prescribed in the rule.[2]

The Commission effectively instructed the Division to prepare a Rule 62 appraisal[3] and ruled that the appraisals exchanged by the Division and submitted at the Formal Hearing complied with the directives of the 2006 Order.[3]

Several days prior to, and again at the commencement of the Formal Hearing, the Counties moved to withdraw their appeals for both tax years, which would have effectively set RESPONDENT's fair market value for each year at the value established by the Agreement methodology. RESPONDENT argued that after appealing the 2004 and 2005 assessments and having compelled the other parties and the Commission to incur the substantial time and expenses associated with the proceedings and preparations for the Formal Hearing, the Counties were no longer free on the eve of the Formal Hearing to unilaterally withdraw their appeals as a procedural method to preserve the originally assessed values.[4] The Commission, in the absence of a stipulation from all the parties, denied the Counties' Motions to Withdraw their appeals, pursuant to Rule 41 of the Utah Rules of Civil Procedure.[5]

Based upon the pleadings, testimony and evidence presented at the Formal Hearing, the Commission makes the following:

FINDINGS OF FACT

1. The tax at issue is property tax.

2. The tax years at issue are 2004 and 2005.

3. The lien dates for the two years under appeal are January 1, 2004 and January 1, 2005, respectively.

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[2] January 11, 2006 Order at pp. 13-14.
[3] Tr. (Sept. 20) at 115.
[4] Tr. (Sept. 18) at 32-35.
[5] September 15, 2006 Order Denying Counties' Motion to Withdraw Appeals; Tr. (Sept. 18) at 37, 69.

4. RESPONDENT owns property in Utah with which it (WORDS REMOVED). RESPONDENT owns two primary (X) assets: 1) the (WORDS REMOVED) ASSET 1, (WORDS REMOVED) located in COUNTY 1, Utah; and 2) a partial interest in the ASSET 2, a (WORDS REMOVED) located in COUNTY 2, Utah."[6] RESPONDENT also owns and operates (WORDS REMOVED) out of the ASSET 1.[7]

5. RESPONDENT's Utah property is classified as a "public utility," as defined in Utah Code Ann. §59-2-201(1)(b), and as a "unitary property" and an "(X) property" subject to assessment under Rule 62.

6. RESPONDENT's property is assessed by the Division each year for property tax purposes, and RESPONDENT's assessed value is apportioned among the petitioning Counties.

7. For the 2004 tax year, the Division used the Agreement methodology to assess the value of RESPONDENT's property at $$$$$.[8]

8. For the 2005 tax year, the Division used the Agreement methodology to assess the value of RESPONDENT's property at $$$$$.[9]

9. The Counties timely filed appeals to contest the Division's 2004 and 2005 assessments of RESPONDENT's property.

10. RESPONDENT did not file appeals to contest the Division's 2004 and 2005 assessments of its property.

11. On August 4, 2006, the parties exchanged the appraisals that they would present at the Formal Hearing. Both the Division and the Counties claimed that they relied on Rule 62 in preparing their respective appraisals. RESPONDENT did not prepare separate appraisals, but supported

[6] Hearing Exhibit 5 at 10-11.
[7] Hearing Exhibit 5 at 11.
[8] Hearing Exhibit 33.

the appraisals prepared by the Division.

12. At the commencement of the Formal Hearing, the Counties argued that the Division's Original Assessments ("Original Assessments") should be the only appraisals considered and that the Division should not be allowed to submit a "different" Rule 62 appraisal. The Commission rejected this argument as inconsistent with the Counties' own actions and arguments at the 2005 Hearing and as inconsistent with the Commission's 2006 Order.[10] At the conclusion of the Formal Hearing, the Commission granted the Division's motion to amend its original answer to conform with the 2006 Order and with the evidence it submitted at the Formal Hearing.[11]

13. At the pre-hearing appraisal exchange, the Counties provided appraisals prepared by PETITIONER REP. 2. Notwithstanding the Counties' opening argument and motions at the Formal Hearing, PETITIONER REP. 2 testified that he believed that the Original Assessments were below the fair market value of RESPONDENT's operating assets.[12] The Division's appraiser, RESPONDENT REP. 4, likewise testified that he did not believe the Original Assessments represented better estimates of value than those determined in the Division's appraisals that were prepared in compliance with the methods described in Rule 62.[13]

14. In the 1990's, the assets at issue, which RESPONDENT had been operating under a complex financial arrangement, were in serious financial trouble. The cash flows generated by operation of these assets were insufficient to service the debt that financed the construction of the assets.[14] Following a series of debt restructuring arrangements and attempted negotiated sales, RESPONDENT

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[9] Hearing Exhibit 34.
[10] Tr. (Sept.18) at 69-71.
[11] Tr. (Sept.21) at 237, 240-242.
[12] Tr. (Sept. 19) at 112-13.
[13] Tr. (Sept. 20) at 60-61.
[14] Tr. (Sept. 20) at 133-38.

commenced an extended bid process.[15] RESPONDENT's creditors allowed it to submit its own bid,[16] and RESPONDENT purchased the assets from the original owners effective December 31, YEAR. RESPONDENT then restated the value of its operating assets on its books to reflect its acquisition costs in accordance with Generally Accepted Accounting Principles ("GAAP"),[17] as well as with the applicable regulatory accounting requirements of the FEDERAL COMMISSION ("FEDERAL COMMISSION").[18] RESPONDENT REP. 7 estimated the total "write-down" of the assets to be between $$$$$ and $$$$$.[19]

15. RESPONDENT REP. 4, an appraiser employed by the Division, prepared the Original Assessments of RESPONDENT's property for the 2004 and 2005 tax years based on the Agreement valuation methodology.[20]

PROPERTY TAX DIVISION'S 2004 APPRAISAL

16. The Division's appraisal for the 2004 tax year concluded that the fair market value of the taxable, Utah operating property of RESPONDENT was $$$$$.[21]

17. RESPONDENT REP. 4 presented the Division's appraisal for 2004 as his opinion of fair market value, but subsequently testified that he believed he made an error in his historical cost approach by subtracting Deferred Income Taxes ("DFIT").[22]

18. The Division's 2004 appraisal, and RESPONDENT REP. 4's subsequent correction of the DFIT adjustment, can be summarized as follows:[23]

	Weighting in Appraisal	Value Shown	Value Corrected for DFIT
Cost Approach	50%	$$$$$	$$$$$

[15] Tr. (Sept. 20) at 137-141; Tr. (Sept. 21) at 90-94, 109-110, 172.
[16] Tr. (Sept. 20) at 140.
[17] Tr. (Sept. 20) at 139-147.
[18] Tr. (Sept. 20) at 172.
[19] Id.; Tr. (Sept. 21) at 44-45.
[20] Hearing Exhibits 33 & 34; Tr. (Sept. 20) at 21-23.
[21] Hearing Exhibit 16A at PTD 0001.
[22] Hearing Exhibit 16A at PTD 0010; Tr. (Sept. 19) at 193, 195-96; Tr. (Sept. 20) at 37-40.

Income Approach	50%	$$$$$	$$$$$
Final System Value (rounded)		$$$$$	$$$$$
Utah Allocation %		X %%%%%	X %%%%%
Utah Value Before Adjustments		$$$$$	$$$$$
Adjustment for Motor Vehicles		- $$$$$	- $$$$$
2004 Utah Assessed Value (rounded)		$$$$$	$$$$$

PROPERTY TAX DIVISION'S 2005 APPRAISAL

19. The Division's appraisal for the 2005 tax year concluded that the fair market value of the taxable, Utah operating property of RESPONDENT was $$$$$.[24]

20. RESPONDENT REP. 4 presented the Division's appraisal for 2005 as his opinion of fair market value, but again testified that he believed he made an error in his historical cost approach by subtracting DFIT.[25]

21. The Division's 2005 appraisal, corrected for the DFIT adjustment, can be summarized as follows:[26]

	Weighting	Value Shown in Appraisal	Value Corrected for DFIT
Cost Approach	50%	$$$$$	$$$$$
Income Approach	50%	$$$$$	$$$$$
Final System Value (rounded)		$$$$$	$$$$$
Utah Allocation %		X %%%%%	X %%%%%

[23] Hearing Exhibit 16A at PTD 0007.
[24] Hearing Exhibit 16B at PTD 0025.
[25] Hearing Exhibit 16B at PTD 0034; Tr. (Sept. 19) at 193, 195-96; Tr. (Sept. 20) at 37-40.
[26] Hearing Exhibit 16B at PTD 0031.

Utah Value before Adjustments	$$$$$	$$$$$
Adjustment for Motor Vehicles	- $$$$$	- $$$$$
2005 Utah Assessed Value (rounded)	$$$$$	$$$$$

RESPONDENT'S POSITION

22. RESPONDENT did not prepare any appraisals, but relied on and supported the Division's appraisal for both the 2004 and 2005 tax years.

23. RESPONDENT's only deviation from the Division's position at the Formal Hearing was that it believed the Division's appraisals for both years correctly made an adjustment for DFIT that the Division extended to all similar taxpayers, and that removing the DFIT adjustment from the historical cost approach was not appropriate.

COUNTIES' 2004 APPRAISAL

24. The Counties' appraisal for 2004 concluded that the fair market value of the taxable, Utah operating property of RESPONDENT was $$$$$.[27] The appraisal was prepared by PETITIONER REP. 2, a certified general appraiser, and can be summarized as follows:[28]

	Weighting	Value
HCLD Cost Indicator	25%	$$$$$
RCNLD Cost Indicator	25%	$$$$$
Income Approach	25%	$$$$$
Market Approach	25%	$$$$$

[27] Hearing Exhibit 5 at 49.
[28] Hearing Exhibit 5 at 24, 28, 43, 46-49.

2004 Utah Assessed Value (rounded)		**$$$$$**

COUNTIES' 2005 APPRAISAL

25. The Counties' appraisal for 2005, also prepared by PETITIONER REP. 2, concluded that the fair market value of the taxable operating property of RESPONDENT was $$$$$,[29] and can be summarized as follows:[30]

	Weighting	**Value**
HCLD Cost Indicator	25%	$$$$$
RCNLD Cost Indicator	25%	$$$$$
Income Approach	25%	$$$$$
Market Approach	25%	$$$$$
2005 Utah Assessed Value (rounded)		$$$$$

SIGNIFICANT DIFFERENCES BETWEEN THE PARTIES

Cost Approaches

26. Each of the appraisals submitted by the Division and the Counties included an HCLD (historical cost less depreciation) cost indicator of value. The two primary differences between the parties concerning this approach involve RESPONDENT's "asset write down" after its purchase of the assets in YEAR and the adjustment for DFIT (deferred income tax).

27. Asset Write Down in HCLD Approach. The Division's HCLD approach used a restated historical cost amount that reflected an asset write down resulting from the asset acquisition and

[29] Hearing Exhibit 5 at 49.
[30] Hearing Exhibit 5 at 24, 28, 43, 46-49.

associated debt-restructuring transaction effective December 31, YEAR.[31] For the Division, RESPONDENT REP. 4 and RESPONDENT REP. 3 both testified that similar "write down" treatments were afforded to other taxpayers, and that they were not aware of any situations in which the Division had not used the "written down" numbers appearing on a taxpayer's books in preparing its historical cost approach to value.[32] RESPONDENT REP. 3 testified that the write down amount, which was attributable almost entirely to the ASSET 1, represents a deduction for obsolescence and produces a more accurate value for the assets than would be achieved using the actual original costs. [33]

28. PETITIONER REP. 2, however, testified that the write down amount should be added back to RESPONDENT's reported book costs to estimate the original costs of constructing the ASSET 1.[34] PETITIONER REP. 2 based his position on the definition of historical cost in the WSATA Manual as the "original cost of construction." However, he acknowledged that the definition of historical cost, as it appears in Rule 62, expands the WSATA definition to include either "the original construction or acquisition cost as recorded on a firm's accounting records."[35] PETITIONER REP. 2 further acknowledged that, although he believed the transaction reflected by the write down was a "distressed sale," and therefore not representative of an "open market transaction," he had no evidence that either the sellers of the assets or the bidders for the assets were acting under financial distress.[36]

29. For RESPONDENT, RESPONDENT REP. 4, a former officer of COMPANY 1, testified that his former company was an "aggressive bidder" for the assets of RESPONDENT, as well as for most other (WORDS REMOVED) properties available for sale in North America during the

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[31] Tr. (Sept. 19) at 196-97; Tr. (Sept. 20) at 70.
[32] Id.; Tr. (Sept. 20) at 71-72.
[33] Tr. (Sept. 19) at 234; Tr. (Sept. 20) at 69-71.
[34] Tr. (Sept. 19) at 114-15; Tr. (Sept. 21) at 145-151.
[35] Tr. (Sept. 19) at 16-18.
[36] Tr. (Sept. 19) at 38-44.

relevant years.[37] RESPONDENT REP. 4 also testified that his former company generally placed "no weight" on the historical or depreciated book cost of the assets in evaluating their bid price.[38] In contrast, evidence of the amount actually paid for the acquisition of a group of assets, as reflected by an adjustment to the book cost of the assets, was something his company would and did take into account.[39] Based on COMPANY 1's participation in the bid process leading to RESPONDENT's acquisition of the assets at issue, RESPONDENT REP. 4 characterized the process as one where his former company expected aggressive bidding.[40]

30. Also for RESPONDENT, RESPONDENT REP. 7 testified that the amount of the write down (WORDS REMOVED) on RESPONDENT's books in YEAR and YEAR totaled between $$$$$ and $$$$$.[41] The differences between the values that RESPONDENT REP. 4 and PETITIONER REP. 2 estimated with the HCLD cost indicator, after RESPONDENT REP. 4 made his DFIT "corrections," are approximately $$$$$ for the 2004 year and $$$$$ for the 2005 year.

31. RESPONDENT REP. 7 also testified that RESPONDENT applied to the FEDERAL COMMISSION for, but was denied permission to create, a regulatory asset to offset the reduction in its rate base resulting from this acquisition adjustment.[42] Furthermore, the write down of approximately $$$$$ resulted in a corresponding downward adjustment in the FEDERAL COMMISSION's analysis of RESPONDENT's rate of return on its rate base.[43]

32. DFIT. RESPONDENT REP. 4 testified that the Division's appraisals included an adjustment for RESPONDENT's reported DFIT, but that he believed the adjustment should be

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[37] Tr. (Sept. 21) at 86, 92, 108.
[38] Tr. (Sept. 21) at 100-101.
[39] Tr. (Sept. 21) at 103-104.
[40] Tr. (Sept. 21) at 109-110.
[41] Tr. (Sept. 20) at 150, 172; Tr. (Sept. 21) at 44-45.
[42] Id.
[43] Tr. (Sept. 20) at 171-173.

removed, thus increasing his HCLD estimates of value.[44] RESPONDENT REP. 4 explained that the Division deducted DFIT when calculating HCLD estimates of value for rate base regulated cooperatives.[45] He testified, however, that he had come to believe that RESPONDENT was not rate base regulated in the same manner as other (X) companies because the bulk of its revenues are generated from sales on the "open market." He stated that for this reason, his appraisals should be "corrected" to remove the DFIT adjustment from the HCLD approach.[46]

33. PETITIONER REP. 2 also testified that RESPONDENT is not a cost regulated entity, as defined for purposes of Rule 62.[47] PETITIONER REP. 2 further testified that because a majority of RESPONDENT's sales of (X) are to "non-members" at traditionally market-based rates, those rates are different from the rates that a rate base regulated utility would charge its member customers.[48] PETITIONER REP. 2 also testified that RESPONDENT, in its annual report, states that its largest member participant is responsible for only 15 percent of its gross revenues.[49]

34. RESPONDENT reported that the revenue generated by its 2002 PRODUCT sales totaled $$$$$. Of this amount, $$$$$, or %%%%%, represented sales made to members, while $$$$$, or %%%%%, represented sales made to non-members.[50] For 2003, RESPONDENT reported its PRODUCT sales revenue to be $$$$$, with $$$$$, or %%%%%, made to members and $$$$$, or %%%%%, made to non-members.[51] For 2004, RESPONDENT reported its PRODUCT sales revenue to be $$$$$, with $$$$$, or %%%%%, made to members and $$$$$, or %%%%%, made to non-members.[52]

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44 Tr. (Sept. 20) at 37-39.
45 Id.
46 Tr. (Sept. 19) at 223-224; Tr. (Sept. 20) at 18, 37-40.
47 Tr. (Sept. 18) at 108-110.
48 Id.; Tr. (Sept. 19) at 143-145, 160-161.
49 Tr. (Sept. 18) at 110.
50 Exhibit 7A at 11.
51 Id., Exhibit 7B at PTD 0619.
52 Exhibit 7B at PTD 0619.

35. RESPONDENT REP. 7 testified that RESPONDENT is subject to cost-based rate regulation by the FEDERAL COMMISSION for its wholesale transactions in the same manner and to the same extent as all other Utah (WORDS REMOVED).[53] RESPONDENT REP. 7 further testified that the FEDERAL COMMISSION deducted DFIT from RESPONDENT's cost rate base "in a normal manner consistent with FEDERAL COMMISSION accounting practices" for other cost regulated utilities.[54] In addition, RESPONDENT REP. 7 testified that RESPONDENT has received authority from FEDERAL COMMISSION to offer market-based rates, which serves the purpose of expediting the rate process and bringing some additional market discipline outside of regulators to the rates transacted in the marketplace.[55] However, RESPONDENT REP. 7 testified that RESPONDENT has not, to his knowledge, ever had a rate-setting hearing before the Utah Public Service Commission.[56]

36. RCNLD. PETITIONER REP. 2's appraisal also included an RCNLD (replacement cost new less depreciation) cost indicator.[57] PETITIONER REP. 2 testified that he felt this additional cost approach was necessary because of the specific "problems" associated with an HCLD cost indicator where RESPONDENT had written down the historical costs of its assets.[58]

37. To estimate a replacement cost for RESPONDENT's (X) facilities, PETITIONER REP. 2 analyzed and relied upon the projected costs for (WORDS REMOVED) facilities in the intermountain west that were announced within several months of January 1, 2004.[59] To

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53 Tr. (Sept. 20) at 167-174; Tr. (Sept. 21) at 212-215.
54 Tr. (Sept. 20) at 240-242.
55 Tr. (Sept. 20) at 168-169; Tr. (Sept. 21) at 214.
56 Tr. (Sept. 20) at 243-244.
57 Hearing Exhibit 5.
58 Tr. (Sept. 18) at 123-124.
59 Tr. (Sept. 18) at 125,127.

estimate a replacement cost for RESPONDENT's (X) facilities, PETITIONER REP. 2 relied upon a study prepared for RESPONDENT in 1996 by COMPANY 2.[60]

38. PETITIONER REP. 2 testified that during his tenure with the Division, he was not aware of any instances in which the Division had prepared and used an RCNLD approach for the property of any other (X) company.[61] In addition, PETITIONER REP. 2 acknowledged that Rule 62 provides that the RCNLD approach may be impractical to implement in a mass appraisal environment, but stated that it was a plausible method to value RESPONDENT's property, whose assets are, for the most part, confined to two (X) ASSETS for which replacement costs are readily available.[62]

39. PETITIONER REP. 2 further acknowledged that he was aware that there may have been "over a hundred" new "(WORDS REMOVED)" ASSETS constructed in the western United States to provide base load (X) between 1985 and 2004 and that there were very few (WORDS REMOVED) ASSETS built during the same period.[63] Nevertheless, PETITIONER REP. 2 testified that he did not consider the significantly lower costs associated with constructing (WORDS REMOVED) in his RCNLD approach for RESPONDENT because he believed that RESPONDENT's ASSETS would be replaced with (WORDS REMOVED) ASSETS, partly due to the volatility of the market price of (X).[64]

40. The Division argued that PETITIONER REP. 2's RCNLD approach was not appropriate because: 1) it relied on a ratio based on PETITIONER REP. 2's "incorrect" historic cost approach; 2) because it failed to consider the costs of (WORDS REMOVED) ASSETS; and 3) because it used data from announced ASSETS whose comparability was questionable at best and that had either

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[60] Tr. (Sept. 18) at 128-129.
[61] Tr. (Sept. 19) at 76-78.
[62] Id.; Tr. (Sept. 18) at 133-134.
[63] Tr. (Sept. 19) at 83-85.
[64] Tr. (Sept. 19) at 83-92.

never been built or had experienced cost overruns.[65]

41. For RESPONDENT, RESPONDENT REP. 7 testified that the prevalent technology chosen by (X) companies in Utah making a decision to add base load resources near the lien dates was (WORDS REMOVED).[66] RESPONDENT REP. 7 further testified that joint studies of the economic feasibility of constructing both new (WORDS REMOVED) and (WORDS REMOVED) (X) ASSETS at the ASSET 1 site concluded that neither type of (X) could be economically justified given a number of factors, including the limitations on (X) sources and access to markets to sell the PRODUCT.[67]

42. RESPONDENT REP. 4, on behalf of RESPONDENT, testified that based on his experience as manager of COMPANY 1's (X) facilities, the technology of choice for construction of new base load (X) ASSETS in the United States from the late 1980's through 2004 was (WORDS REMOVED) TECHNOLOGY.[68] He further testified that as a "willing, even aggressive buyer" and bidder for virtually all available (X) ASSETS in the U.S. during the relevant years, COMPANY 1 gave "no weight" to either the historical book costs (in the absence of a reported recent sale) or to estimated replacement costs, as neither was relevant to the assets' revenue (X) ability.[69]

<u>Income Approaches</u>

43. In the appraisals submitted by the Division and the Counties, each appraiser included a yield capitalization income approach in which he estimated the expected "net cash flow" from RESPONDENT's assets during the year immediately following the lien date and divided that amount by an estimated capitalization rate to produce an estimate of value. The primary differences in

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65 Tr. (Sept. 19) at 125-27; Tr. (Sept. 20) at 72-76.
66 Tr. (Sept. 21) at 61-66.
67 Tr. (Sept. 20) at 244-250.
68 Tr. (Sept. 21) at 104-107. 121-122.

RESPONDENT REP. 4 and PETITIONER REP. 2's estimated "net cash flows" concerned their estimates of "net operating income" ("NOI"), "capital expenditures," and DFIT. The primary difference in the appraisers' estimated capitalization rates concerned their estimates of the "cost of equity."

44. Net Operating Income ("NOI"). The amounts of RESPONDENT's NOI for the years 1999 through 2004 (rounded to the nearest thousand dollars), as shown in both the Division and the Counties' appraisals,[70] is:

1999	$$$$$	2002	$$$$$
2000	$$$$$	2003	$$$$$
2001	$$$$$	2004	$$$$$

45. After reviewing the amounts of RESPONDENT's NOI for the five years preceding the 2004 tax year and for the six years preceding the 2005 tax year, RESPONDENT REP. 4 concluded that RESPONDENT's "normalized" NOI was $$$$$ for the 2004 tax year and $$$$$ for the 2005 tax year.[71]

46. RESPONDENT REP. 4 reasoned that RESPONDENT's most likely future NOI for 2004 and 2005 would not be a simple average of the preceding five years, which included the 2000 and 2001 years, because of the significant distortions in RESPONDENT's reported income that resulted from the STATE 1 (SITUATION).[72] RESPONDENT REP. 4 and RESPONDENT REP. 3 both concluded that because this crisis created an unusual situation that was not likely to be repeated, use of the income received in those years abnormally exaggerated the projected future income that RESPONDENT's properties would generate.[73] RESPONDENT REP. 4 also explained that he placed little, if any, weight on RESPONDENT's future forecasts of NOI because he believed that basing his NOI estimates on prior

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[69] Tr. (Sept. 21) at 103, 119.
[70] Exhibit 5 at exhibits 7 & 7a; Exhibit 16A at PTD 0013; Exhibit 16B at PTD 0038.
[71] Exhibit 16A at PTD 0013; Exhibit 16B at PTD 0038.

[72] Tr. (Sept. 19) at 201-202.
[73] Tr. (Sept. 19) at 201-205; Tr. (Sept. 20) at 76-78.

years' information was more reliable.[74]

47. PETITIONER REP. 2 reviewed the same five preceding years of reported income information for RESPONDENT to arrive at his estimates of NOI for each year at issue.[75] Like the Division, PETITIONER REP. 2 was unable to find "any discernable trend" in these historical income figures.[76] Unlike the Division, however, PETITIONER REP. 2 reasoned that in the absence of a discernable trend, a simple average of all five years was a reasonable approach for purposes of projecting the next year's net operating income and, consequently, its projected cash flows. As a result, PETITIONER REP. 2 determined that RESPONDENT's projected NOI would be approximately $$$$$ for the 2004 tax year and $$$$$ for the 2005 tax year.

48. Although PETITIONER REP. 2 acknowledged being aware that "wholesale prices were quite high" during 2000 and 2001 because of the STATE 1 (SITUATION) and that these prices "came down," he reasoned that "they could go back up again" as part of a normal business cycle.[77] PETITIONER REP. 2 also testified that he was aware of some "enhanced reporting requirements" mandated by the federal government after the (SITUATION) of 2000 and 2001, but did not consider these regulatory changes adequate to preclude the possibility of a re-occurrence of this cycle.[78]

49. RESPONDENT REP. 7 testified that the market conditions of 2000 and 2001 were anomalies that were unlikely to repeat themselves.[79] RESPONDENT REP. 7 supported his opinion by noting that with the exception of the period in 2000 and 2001, actual market prices for (WORDS REMOVED) in the western U.S. markets prior to the relevant lien dates followed a relatively predictable

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74 Tr. (Sept. 19) at 243-246.
75 Hearing Exhibit 5 at exhibits 7 & 7a.
76 Tr. (Sept. 18) at 150-152; Tr. (Sept. 19) at 45.
77 Tr. (Sept. 21) at 46-48.
78 Tr. (Sept. 19) at 48-49.
79 Tr. (Sept. 21) at 161-162.

upward trend.[80] RESPONDENT REP. 7 further testified that the corrective actions subsequently taken by the FEDERAL COMMISSION should lessen the likelihood of any repetition of the unusually high wholesale market prices experienced during the temporary STATE 1 crisis.[81]

50. Based on his experience as manager of COMPANY 1's (X) assets, RESPONDENT REP. 4 confirmed that the shortage of (X) capacity and the short-lived regulatory restrictions precluding STATE 1 utilities from entering into long-term contracts for the purchase of (X) created an exceptionally volatile market for (WORDS REMOVED) in STATE 1 that affected the entire western United States during the 2000 and 2001 timeframe.[82] RESPONDENT REP. 4 also supported RESPONDENT REP. 7's conclusion that regulatory changes made subsequent to 2001 were designed to and are likely to prevent a repetition of the abnormal wholesale market conditions and prices.[83]

51. Capital Expenditures. In determining RESPONDENT's projected cash flows for the years at issue, RESPONDENT REP. 4 concluded that RESPONDENT's capital expenditures would equal the amount of its depreciation and amortization expenses associated with the ASSET 1 and ASSET 2s, under his assumption that RESPONDENT would have zero real growth in its (X) assets over the long-term.[84] RESPONDENT REP. 4 explained that it is the Division's belief that replacement capital expenditures would have to "roughly equal" depreciation expenses over the long-term in order to maintain the (X) and keep it operating.[85]

52. RESPONDENT REP. 4 considered RESPONDENT's "historical" depreciation and amortization expenses and capital expenditures in his cash flow analysis for each tax years at issue,

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[80] Hearing Exhibit 21; Tr. (Sept. 20) at 163-165.
[81] Tr. (Sept. 20) at 165-166, 175-178.
[82] Tr. (Sept. 21) at 113-115; 120.
[83] Tr. (Sept. 21) at 115.
[84] Tr. (Sept. 19) at 199-200.
[85] Tr. (Sept. 19) at 210; Tr. (Sept. 20) at 9-11.

reporting the following information in his appraisals:[86]

	Depreciation & (X) Amortization		Capital Expenditures		Difference
2000	$$$$$	-	$$$$$	=	($$$$$)
2001	$$$$$	-	$$$$$	=	$$$$$
2002	$$$$$	-	$$$$$	=	$$$$$
2003	$$$$$	-	$$$$$	=	$$$$$
2004	$$$$$	-	$$$$$	=	$$$$$

53. Based on these historical expenses, RESPONDENT REP. 4 determined that for the 2004 tax year, the "weighted average" of RESPONDENT's prior depreciation and (X) amortization expenses was $$$$$ and the "weighted average" of its prior capital expenditures was $$$$$, which results in a difference of approximately $$$$$.[87] He also determined that for the 2005 tax year, the "weighted average" of RESPONDENT's depreciation and (X) amortization expenses was $$$$$ and the "weighted average" of its capital expenditures was $$$$$, a difference of approximately $$$$$.[88]

54. Nevertheless, RESPONDENT REP. 4 estimated RESPONDENT's cash flows for the years at issue under the assumption that "normalized" depreciation and (X) amortization expenses would equal "normalized" capital expenditures because he did not believe that RESPONDENT could invest lower amounts into its ASSETS and still maintain an operating property at the end of 20 or 30 years.[89] He admitted, however, that it appeared from RESPONDENT's financial documents that its depreciation amounts would exceed its capital expenditures at least for the near future.[90]

55. PETITIONER REP. 2 testified that the Division's assumption that depreciation and capital expenditures are equal are not borne out in RESPONDENT's own future projections, as found

[86] Exhibit 16A at page after PTD 0012; Exhibit 16B at PTD 0037.
[87] Exhibit 16A at page after PTD 0012.
[88] Exhibit 16B at PTD 0037.
[89] Tr. (Sept. 20) at 11-15.
[90] Tr. (Sept. 20) at 52-54.

in Exhibits 17A and 17B.[91] PETITIONER REP. 2 also considered RESPONDENT's "historical" depreciation expenses and capital expenditures in his cash flow analysis for each tax year at issue, reporting the following information in his appraisals:[92]

	Depreciation		**Capital Expenditures**		**Difference**
1999	$$$$$	-	$$$$$	=	($$$$$)
2000	$$$$$	-	$$$$$	=	($$$$$)
2001	$$$$$	-	$$$$$	=	$$$$$
2002	$$$$$	-	$$$$$	=	$$$$$
2003	$$$$$	-	$$$$$	=	$$$$$
2004	$$$$$	-	$$$$$	=	$$$$$

56. PETITIONER REP. 2 averaged the historical information from the prior five-year period to determine his projected cash flows for each tax year. With this approach, he determined that for the 2004 tax year, RESPONDENT's average depreciation expense of $$$$$ would exceed its average capital expenditures of $$$$$ by approximately $$$$$. Similarly, for the 2005 tax year, he determined that RESPONDENT's average depreciation expense of $$$$$ would exceed its average capital expenditures expense of $$$$$ by approximately $$$$$.

57. PETITIONER REP. 2 stated that the Division's assumption that RESPONDENT's depreciation and amortization expenses equaled capital expenditures was the "most important" of its assumptions and "probably has a bigger effect on their ultimate opinion of value that anything else and it is [an] incorrect, invalid assumption that is not borne out, not only by the history, but also by the forecasts of the cash flows associated with this property."[93] PETITIONER REP. 2 testified that the Division should not have treated RESPONDENT in the same manner it treated COMPANY 2, another (X) company, because that company has a "very dramatic capital spending program" where it

[91] Tr. (Sept. 18) at 157.
[92] Exhibit 5 at exhibits 7 & 7a.
[93] Tr. (Sept. 21) at 129.

is adding new (WORDS REMOVED) on an annual basis, while RESPONDENT is not. [94] PETITIONER REP. 2 further explained that for purposes of cash flow modeling, cash flows are "front-loaded" and, as a result, present value is higher when capital expenditures are timed to occur near the end of the life of an asset and depreciation remains constant during the asset's life.[95]

58. In yearly reports RESPONDENT submitted to the Division, RESPONDENT reported that its "depreciation and amortization" expenses would be significantly higher than its "total change in working capital for utility (X)" for the tax years 2004 through 2025, estimating that for most years its depreciation and amortization expenses would exceed its capital expenditures by more than $$$$$.[96] RESPONDENT REP. 3 explained, however, that these reports were not intended to reflect future cash flows and would not have reflected estimates of capital expenditure that RESPONDENT's creditors had not yet authorized or approved.[97]

59. RESPONDENT REP. 3 testified that the ASSET 1 was constructed in YEAR 2.[98] He also testified that RESPONDENT had incurred large capital expenditure projects in the past and that he anticipated that it would also incur costs for future projects to maintain its ASSETS, including projects related to (WORDS REMOVED).[99] RESPONDENT REP. 3 further testified that future pollution control upgrades would cost RESPONDENT approximately $$$$$ for the ASSET 2 and $$$$$ for the ASSET 1.[100]

60. PETITIONER REP. 2 testified that RESPONDENT's scheduled overhauls of existing (X) equipment should be considered a maintenance expense and not a capital expenditure for

[94] Tr. (Sept. 21) at 130.
[95] Tr. (Sept. 21) at 230-232.
[96] Exhibit 17A at PTD 0438.
[97] Tr. (Sept. 20) at 203-205.
[98] Tr. (Sept. 21) at 22.
[99] Tr. (Sept. 20) at 205-206.
[100] Tr. (Sept. 20) at 215-216.

purposes of estimating RESPONDENT's projected cash flows.[101] He further testified that industry-wide, government-mandated pollution control upgrades would likely result in a price increase for (X) and not necessarily a cost that RESPONDENT would ultimately bear.[102]

61. RESPONDENT REP. 4 testified that costs incurred to comply with environmental issues are not only associated with capital expenditures, but are also associated with maintenance or operating costs.[103] He further testified that a (WORDS REMOVED) is a complicated system, which in the first half of its design life (approximately the first 18 to 20 years), only requires, generally, good maintenance practices to be kept in good condition and "running at high loads."[104] He also explained that after this amount of time, a (WORDS REMOVED) generally requires a significant investment in capital expenditures, as well as maintenance, to run at a high level, resulting in capital expenditure and maintenance costs rising "quite a bit" in the second half of a (X)'s design life.[105]

62. DFIT. RESPONDENT REP. 4 determined that the DFIT amounts that should be used to calculate RESPONDENT's normalized cash flows were $$$$$ for the 2004 tax year and $$$$$ for the 2005 tax year. RESPONDENT REP. 4 estimated these amounts by analyzing RESPONDENT's DFIT for prior years, as follows:[106]

2004 DFIT Estimate		**2005 DFIT Estimate**	
2000	n/a	2000	n/a
2001	($$$$$)	2001	($$$$$)
2002	$$$$$	2002	$$$$$

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[101] Tr. (Sept. 21) at 130-132.
[102] Id.
[103] Tr. (Sept. 21) at 172.
[104] Tr. (Sept. 21) at 173.
[105] Tr. (Sept. 21) at 173-174.
[106] Exhibit 16A at page after PTD 0012; Exhibit 16B at PTD 0037.

2003	($$$$$)	2003	($$$$$)
		2004	$$$$$
Weighted Average:	($$$$$)		$$$$$
DFIT Used To Calculate Cash Flow:	$$$$$		$$$$$

63. RESPONDENT included DFIT information for prior years in the Annual Report of (X) Utilities ("Annual Report") that it prepared and remitted to the Division for assessment purposes each year.[107] In its Annual Report for the year ended December 31, 2003, RESPONDENT reported the amount of its DFIT at the beginning of the 2003 year to be $$$$$, which is the amount RESPONDENT REP. 4 showed as DFIT for the 2002 year in his cash flows analyses for the two years at issue.[108] In its Annual Report for the year ended December 31, 2004, RESPONDENT reported the amount of its DFIT at the beginning of the 2004 year to be *positive* $$$$$. However, RESPONDENT REP. 4 showed RESPONDENT's DFIT got the 2003 year to be *negative* $$$$$ in his analyses.[109]

64. PETITIONER REP. 2 determined that the amounts of DFIT that should be used to calculate RESPONDENT's normalized cash flows were $$$$$ for the 2004 tax year and $$$$$ for the 2005 tax year. PETITIONER REP. 2 determined his DFIT estimates for the two tax years at issue by averaging RESPONDENT's DFIT for the prior five years, as follows:[110]

2004 DFIT Estimate		**2005 DFIT Estimate**	
1999	n/a		
2000	n/a	2000	n/a
2001	$$$$$	2001	$$$$$
2002	$$$$$	2002	$$$$$
2003	$$$$$	2003	$$$$$

[107] Exhibit 17A at PTD 0667, 669; Exhibit 17B at 182, 184.
[108] Exhibit 16A at page after PTD 0012; Exhibit 16B at PTD 0037.
[109] Id.
[110] Exhibit 5 at exhibits 7 & 7a.

	_______	2004	($$$$$)
Five-Year Average:	$$$$$		$$$$$

65. For those prior years in which the Division showed RESPONDENT's DFIT to be positive, PETITIONER REP. 2 showed DFIT to be negative in his analyses, and vice versa. PETITIONER REP. 2's figures are supported by the information reported by RESPONDENT in its FEDERAL COMMISSION Form No. 1 for the 2003 and 2004 reporting periods.[111] In its FEDERAL COMMISSION Form No. 1 for the year ended December 31, 2003, RESPONDENT reported its DFIT for the "current year" (2003) to be positive $$$$$ and for the "previous year" (2002) to be negative $$$$$.[112] In its FEDERAL COMMISSION Form No. 1 for the year ended December 31, 2004, RESPONDENT reported its DFIT for the "current year" (2004) to be negative $$$$$ and for the "previous year" (2003) to be positive $$$$$.[113]

66. Capitalization Rate – Cost of Equity. In calculating his yield capitalization income indicators, RESPONDENT REP. 4 used a weighted average cost of capital (referred to as "capitalization rate") of %%%%% for the 2004 tax year and %%%%% for the 2005 tax year. RESPONDENT REP. 3 explained that EMPLOYEE 1, another employee in the Division, produced these rates.[114] RESPONDENT REP. 4 added that he helped select the companies that EMPLOYEE 1 used to produce the capitalization rates and that after reviewing the rates, he had determined that they represent his opinions, as well.[115] RESPONDENT REP. 4 and RESPONDENT REP. 3 further testified that the capitalization rates used to value RESPONDENT in the Division's appraisals were the identical capitalization rates developed and used by the Division to assess all (X) companies for the 2004 and 2005 tax years.[116]

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111 Exhibit 5 at 32; Exhibit 6A at 114, Exhibit 6B at 114.
112 Exhibit 6A at 114.
113 Exhibit 6B at 114.
114 Tr. (Sept. 19) at 171-172.
115 Tr. (Sept. 19) at 189-191.
116 Tr. (Sept. 19) at 207-208; Tr. (Sept. 20) at 78-79.

67. PETITIONER REP. 2 produced capitalization rates of %%%%% for the 2004 tax year and %%%%% for the 2005 tax year for use in his yield capitalization income indicators. RESPONDENT REP. 4 and PETITIONER REP. 2 agreed on the cost of debt components they used to establish their respective capitalization rates. As a result, the primary difference between the appraisers' capitalization rates resulted from their estimates of the cost of equity and how they weighted the cost of equity for the 2005 tax year.

68. In determining their respective costs of equity, the Division and PETITIONER REP. 2 each used the capital asset pricing model ("CAPM"), which is specified in Rule 62 as the preferred method for estimating the cost of equity and the method that should be weighted at least fifty percent (%%%%%) in the correlation should other methods also be used.

69. The Division calculated its costs of equity to be %%%%% for the 2004 tax year and %%%%% for the 2005 tax year after considering several methods, as follows:[117]

	2004	**2005**
CAPM (historical)	%%%%% (%%%%% weight)	%%%%% (%%%%% weight)
Risk Premium Model (Value Line Financial Strength)	%%%%% (%%%%% weight)	%%%%% (%%%%% weight)
Risk Premium Model (Industry to Market Bond Rates)	%%%%% (%%%%% weight)	Was Not Prepared
Dividend Growth Model	%%%%% (%%%%% weight)	%%%%% (%%%%% weight)
Correlated Cost of Equity	%%%%%	%%%%%

70. PETITIONER REP. 2 developed a %%%%% cost of equity for the 2004 tax year and a %%%%% cost of equity for the 2005 tax year from information he gathered from selected "guideline companies." As his guideline companies, PETITIONER REP. 2 selected ten (WORDS REMOVED) companies that were primarily located west of the STATE 2 and whose major source of (

[117] Exhibit 16A at PTD 0022; Exhibit 16B at PTD 0047; Tr. (Sept. 19) at 229-230.

X) was (X).[118] PETITIONER REP. 2 calculated his costs of equity after considering several methods, as follows:[119]

	2004	2005
CAPM (historical)	%%%%% (%%%%% weight)	%%%%% (%%%%% weight)
CAPM (ex ante)	%%%%% (%%%%% weight)	%%%%% (%%%%% weight)
Dividend Growth Model	%%%%% (%%%%% weight)	%%%%% (%%%%% weight)
Correlated Cost of Equity	%%%%%	%%%%%

71. RESPONDENT REP. 3 stated that the Division prepares "mass appraisals" and, as a result, may have used more "general" (X) companies in developing its capitalization rates than PETITIONER REP. 2, who may have used more "specific" companies.[120] 70. PETITIONER REP. 2, on the other hand, criticized the Division for using COMPANY 3 ("COMPANY 3") as one of its guideline companies because it was experiencing financial distress during the periods at issue.[121] RESPONDENT REP. 4 testified that he was not aware that COMPANY 3 had reported that it was experiencing internal problems associated with unsubstantiated financial reporting. He also confirmed the Division's information showed COMPANY 3 to have the (WORDS REMOVED) of any of the guideline companies it used to develop its cost of equity.[122]

72. PETITIONER REP. 2 explained that although the ex ante CAPM did not become a valuable tool to estimate cost of equity until the early 2000's, he used it as one of his methods to derive his costs of equity and advocated its use because it is now regularly used by analysts.[123] RESPONDENT REP. 3 testified that the Division had never used the ex ante CAPM because it looks "forward," which the Division believes is more subjective than looking at historical information and because it was not used to

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[118] Tr. (Sept. 18) at 145-149.
[119] Id.; Exhibit 5 at exhibits 9 & 9a.
[120] Tr. (Sept. 19) at 172.
[121] Tr. (Sept. 21) at 132-133, 183-184.
[122] Tr. (Sept. 20) at 225-229.

assess other (X) companies for the years at issue.[124]

73. PETITIONER REP. 2 testified that the Dividend Growth Model ("DGM") is a meaningful indicator to determine a cost of equity for (X) companies because such companies tend to have fairly stable dividend-paying policies and fairly predictable growth rates.[125] He criticized the Division for not giving the DGM's it had calculated any weight when correlating its costs of equity, because the DGM method is recognized in Rule 62 and because the Division's DGM rates were significantly lower than the other rates it used to correlate its costs of equity.[126]

74. For the 2004 tax year, both parties weighted their respective costs of equity at %%%%% and their respective costs of debt at %%%%% in correlating their capitalization rates.[127]

75. The Division and PETITIONER REP. 2 disagreed on what weight to give the cost of equity when correlating a capitalization rate for the 2005 tax year. PETITIONER REP. 2 again weighted the costs of equity and debt at %%%%% each.[128] PETITIONER REP. 2 testified that giving the cost of equity component a %%%%% weighting in determining capitalization rates for RESPONDENT was very generous, as RESPONDENT is primarily financed with debt.[129]

76. The Division weighted its cost of equity component at %%%%% when correlating the rate for the 2005 tax year, as opposed to %%%%% for 2004.[130]

77. Discounted Cash Flow ("DCF") Income Indicator. In addition to his appraisal income indicators, PETITIONER REP. 2 prepared discounted cash flow ("DCF") models to rebut the Division's yield capitalization income indicators and to support the indicators that he himself prepared

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123 Tr. (Sept. 19) at 133.
124 Tr. (Sept. 20) at 79.
125 Tr. (Sept. 18) at 148.
126 Id.
127 Exhibit 16A at PTD 0014; Exhibit 5 at exhibit 9.
128 Exhibit 5 at exhibit 9a.
129 Tr. (Sept. 18) at 147.

and included in his appraisals.[131] With his DCF income indicators, PETITIONER REP. 2 estimated a value for RESPONDENT's Utah assets of approximately $$$$$ for the 2004 tax year and $$$$$ for the 2005 tax year.[132]

78. PETITIONER REP. 2 explained that he prepared his DCF models as an alternative to the "preferred" yield capitalization income indicators for these reasons: 1) problems associated with estimating a single year's normalized NOI and cash flow for RESPONDENT; 2) the "future" NOIs and cash flows anticipated by RESPONDENT are significantly higher than its historical NOIs and cash flows; and 3) the "future" capital expenditures anticipated by RESPONDENT are significantly lower than its historical capital expenditures.[133]

79. PETITIONER REP. 2 derived his DCF indicators of value by: 1) discounting the future cash flows he obtained from RESPONDENT's internal "MODEL 1;" 2) adding his own "terminal value" calculation; and 3) because MODEL 1 combines information for RESPONDENT asserts located in both Utah and STATE 3, subtracting approximately $$$$$ to reflect the value of the (WORDS REMOVED) in STATE 3 that RESPONDENT owns .[134] PETITIONER REP. 2 admitted that he had no discussions with anyone at RESPONDENT about MODEL 1 or about the company's assumptions concerning the components that comprise it.[135]

80. For the Division, RESPONDENT REP. 3 criticized PETITIONER REP. 2's DCF indicators because PETITIONER REP. 2 deducted a value for the (X) that was based on the YEAR Agreement, whereas he believed the value of the (X) to be greater than the amount subtracted by

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[130] Exhibit 16A at PTD 0014; Exhibit 16B at PTD 0039.
[131] Tr. (Sept. 18) at 175-178; Tr. (Sept. 21) at 137-142, 196-197.
[132] Hearing Exhibits 13A and 13B
[133] Tr. (Sept. 18) at 152-160.
[134] Hearing Exhibits 13A and 13B; Tr. (Sept. 18) at 154-157; Tr. (Sept. 19) at 108.
[135] Tr. (Sept. 19) at 107.

PETITIONER REP. 2.[136]

81. RESPONDENT's witness, RESPONDENT REP. 7, testified that MODEL 1 was a successor to, and was developed with essentially the same methodologies, as MODEL 2, which was the basis of the Agreement methodology. RESPONDENT REP. 7 further testified that he participated in developing and reviewing MODEL 1.[137]

82. RESPONDENT REP. 7 testified that RESPONDENT did not unilaterally prepare MODEL 1, explaining that its members and creditors also participate in preparing the model, in order to establish the annual minimal payments that RESPONDENT may pay on the debt it owes its creditors.[138] He further explained that MODEL 1 was prepared solely for purposes of presenting certain information in a format requested by RESPONDENT's lenders, but not as RESPONDENT's separate opinion of the most likely cash flow that would be generated from its properties. Moreover, he testified that MODEL 1 does not represent RESPONDENT's independent forecast and projections of future revenues or costs, but is really a negotiated settlement of the amount that RESPONDENT would agree to obligate itself to in the form of minimum payments on its obligations.[139]

83. RESPONDENT REP. 7 testified that were he to prepare a cash flow analysis to determine the most probable future cash flows for RESPONDENT's Utah operating assets, it would not reflect the amounts shown in MODEL 1.[140] He further stated that he does not believe that MODEL 1 represents the capital and maintenance costs that RESPONDENT will actually incur in the future.[141]

84. As an example, MODEL 1 shows that RESPONDENT's capital expenditures

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[136] Tr. (Sept. 20) at 88-89.

[137] Tr. (Sept. 20) at 198.
[138] Tr. (Sept. 20) at 200.
[139] Tr. (Sept. 20) at 201-202.
[140] Tr. (Sept. 20) at 203.
[141] Tr. (Sept. 20) at 214-215.

will be relatively stagnant in future years and that the "projected" amounts of capital expenditures are significantly less than the amounts of its historic capital expenditures.[142] RESPONDENT REP. 3 explained that RESPONDENT is required to receive authorization or approval from its creditors for capital expenditures and it does not estimate these amounts in the model until they are approved and affect its budget that is being prepared.[143]

85. RESPONDENT REP. 7 testified that in his opinion, PETITIONER REP. 2 also misinterpreted many of the numbers that are included in MODEL 1, which led to his understating the value of the STATE 3 (X).[144] PETITIONER REP. 2 testified, however, that because MODEL 1 combines cash flow information that applies to RESPONDENT's assets located in both Utah and STATE 3, he believes that he appropriately accounted for the STATE 3 (X) assets by subtracting an amount similar to the value of the (X) as assessed by the state of STATE 3.[145]

<u>Market Approach</u>

86. The Counties were the only party to submit a stock and debt market approach in its appraisals.[146] With this indicator of value, PETITIONER REP. 2 estimated the value of RESPONDENT's Utah assets to be approximately $$$$$ for the 2004 tax year and $$$$$ for the 2005 tax year.[147]

87. PETITIONER REP. 2 acknowledged that the stock and debt approach is not one of the two preferred indictors of value prescribed in Rule 62. However, he testified that he believed it was a very good indicator of value for RESPONDENT because RESPONDENT is very heavily debt

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[142] Exhibit 17A at PTD 0438; Exhibit 17B at PTD 0237.

[143] Tr. (Sept. 20) at 203-206; Tr. (Sept. 21) at 207-211.
[144] Tr. (Sept. 20) at 215.
[145] Tr. (Sept. 21) at 157-158, 232-233.
[146] Hearing Exhibit 5 at exhibits 13 and 13a.
[147] <u>Id.</u>

financed, and the value of its debt should not have a lot of controversy associated with it.[148] PETITIONER REP. 2 also admitted, however, that RESPONDENT had no publicly traded stock or publicly traded debt, requiring him to estimate values for both equity and debt.[149]

88. PETITIONER REP. 2 used the reported "fair value" of RESPONDENT's debt from its annual filings with the FEDERAL COMMISSION as an estimate of the market value of its debt.[150] He then imputed a market value for RESPONDENT's equity by adding RESPONDENT's reported retained earnings and accumulated DFIT and applying a "market-to-book ratio" determined from companies he considered comparable to RESPONDENT.[151]

89. PETITIONER REP. 2 acknowledged that he made no attempt to test for or remove any possible intangible values associated with his use of stock prices from his guideline companies to develop market-to-book ratios, stating that the issue of impounding intangibles for (X) companies is less prevalent than with other types of companies. PETITIONER REP. 2 testified that he believed RESPONDENT had few, if any, intangible assets, but acknowledged there may be some intangibles associated with his guideline companies.[152]

90. For the Division, RESPONDENT REP. 3 stated that he believed the stock and debt approach is a viable method of valuation for an (WORDS REMOVED) such as the primary ASSET 1 that RESPONDENT owns.[153] However, he also testified that because of the subjective nature of the assumptions required to estimate an equity value for a company with no publicly traded stock, he considered the use of a stock and debt approach to value RESPONDENT "not as strong an indicator of

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148 Tr. (Sept. 18) at 166-167.
149 Tr. (Sept. 19) at 56-57.
150 Tr. (Sept. 18) at 167-169.
151 Tr. (Sept. 18) at 167.
152 Tr. (Sept. 18) at 171-172; Tr. (Sept. 19) at 70-75; Tr. (Sept. 21) at 172-173.

value as if you have actual stock prices" and recommended that the approach not be used under these circumstances.[154] RESPONDENT REP. 3 further testified that PETITIONER REP. 2's calculations failed to properly account for and remove the amount of debt associated with the STATE 3 (WORDS REMOVED) that services RESPONDENT's ASSET 1 (WORDS REMOVED).[155]

91. RESPONDENT's witness, RESPONDENT REP. 7, testified that PETITIONER REP. 2 had misinterpreted the information presented in the financial reports that RESPONDENT prepared and upon which he relied, resulting in PETITIONER REP. 2 substantially understating the amount of debt associated with STATE 3 (X) assets[156] and substantially overstating the amount of RESPONDENT's accumulated DFIT.[157]

92. RESPONDENT's witness, RESPONDENT REP. 4, testified that for purposes of computing a market value for (X) properties being considered for purchase, COMPANY 1 would not use the stock and debt approach or look to "guidance" from the capital markets. Instead, COMPANY 1 would focus on the clearing prices for (X) from the assets in the (X) markets.[158]

APPORTIONMENT

93. RESPONDENT REP. 3 testified that for the two tax years at issue, the Division apportioned RESPONDENT's value among the various counties based on the original cost of its assets, not on the written down costs reflected on RESPONDENT's books.[159] RESPONDENT REP. 3 also testified that should the Commission reduce RESPONDENT's Utah value, as the Division and

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[153] Tr. (Sept. 20) at 82.
[154] Tr. (Sept. 20) at 82-83.
[155] Tr. (Sept. 20) at 83.

[156] Tr. (Sept. 20) at 187-197.
[157] Tr. (Sept. 20) at 228-231.
[158] Tr. (Sept. 21) at 115-116, 120.

RESPONDENT both propose, RESPONDENT's value should be "reapportioned" to reflect its written down costs as shown on its books, and not to reflect the original costs of its assets.[160]

94. After the Agreement was implemented, some or all of the parties determined that the costs written down and reflected on RESPONDENT's books would need to be adjusted for apportionment purposes. For the 2001 tax year, for example, the amount of value apportioned to COUNTY 1 was adjusted from $$$$$, the amount carried on RESPONDENT's books, to $$$$$, as described in a letter that TAX MANAGER, a tax manager at RESPONDENT, wrote to the Division in 2001.[161] Exhibit 31 shows that the RESPONDENT's "adjusted" apportionment for the tax years at issue is based on RESPONDENT's "invested costs" for each tax area.[162]

95. PETITIONER REP. 2 explained that after RESPONDENT's YEAR acquisition of the assets at issue and the implementation of the Agreement, the written down costs reported on RESPONDENT's books were significantly less than the value at which RESPONDENT was assessed pursuant to the Agreement, which presented a problem for apportionment purposes.[163] PETITIONER REP. 2 testified that it was his recollection that all parties, including the Division, COUNTY 1 and RESPONDENT, resolved the problem by adjusting the booked costs of RESPONDENT's assets in COUNTY 1 upwards to reflect the invested costs, instead of basing the apportionment on booked values that would normally be used for apportionment purposes.[164] PETITIONER REP. 2 testified that with the adjustment, approximately %%%%% of RESPONDENT's value was apportioned to COUNTY 1. He also testified that had the apportionment been based on RESPONDENT's written down booked costs and

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[159] Tr. (Sept. 20) at 70.
[160] Id.
[161] Exhibit 30.

[162] Exhibit 31; Tr. (Sept. 18) at 121.
[163] Id.
[164] Tr. (Sept. 19) at 118-125; Tr. (Sept. 21) at 221-228.

without the adjustment, approximately %%%%% of RESPONDENT's value would have been apportioned to COUNTY 1.[165]

APPLICABLE LAW

1. Utah Code Ann. §59-2-201(1) provides that the Commission shall assess the following property, as follows in pertinent part:

> (a) except as provided in Subsection (2), all property which operates as a unit across county lines, if the values must be apportioned among more than one county or state;
> (b) all property of public utilities;
> . . .

2. Utah Admin. Rule R884-24P-62 ("Rule 62") provides guidance concerning the valuation of state assessed unitary properties, as follows in pertinent part:

> A. Purpose. The purpose of this rule is to:
> 1. specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and
> 2. identify preferred valuation methodologies to be considered by any party making an appraisal of an individual unitary property.
> B. Definitions:
> 1. "Cost regulated utility" means any public utility assessable by the Commission whose allowed revenues are determined by a rate of return applied to a rate base set by a state or federal regulatory commission.
> 2. "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.
> 3. "Rate base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.
> 4. "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a) through (c).
> a) Unitary properties include:
> (1) all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; and
> (2) all property of public utilities as defined in Section 59-2-102.
> b) These properties, some of which may be cost regulated utilities, are

165 Tr. (Sept. 19) at 122.

defined under one of the following categories.

. . . .

(2) "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations, including electric generators, transission, and distribution companies, and other similar entities.

. . . .

C. All tangible operating property owned, leased, or used by unitary companies is subject to assessment and taxation according to its fair market value as of January 1, and as provided in Utah Constitution Article XIII, Section 2. Intangible property as defined under Section 59-2-102 is not subject to assessment and taxation.

D. General Valuation Principles. Unitary properties shall be assessed at fair market value based on generally accepted appraisal theory as provided under this rule.

1. The assemblage or enhanced value attributable to the tangible property should be included in the assessed value. See Beaver County v. WilTel, Inc., 995 P.2d 602 (Utah 2000). The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process.

2. The preferred methods to determine fair market value are the cost approach and a yield capitalization income indicator as set forth in E.

a) Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary to more accurately estimate fair market value.

b) Direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the reconciliation process, as set forth in E.4.

c) Preferred valuation methods as set forth in this rule are, unless otherwise stated, rebuttable presumptions, established for purposes of consistency in mass appraisal. Any party challenging a preferred valuation method must demonstrate, by a preponderance of evidence, that the proposed alternative establishes a more accurate estimate of fair market value.

3. Non-operating Property. Property that is not necessary to the operation of unitary properties and is assessed by a local county assessor, and property separately assessed by the Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

E. Appraisal Methodologies.

1. Cost Approach. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. A cost indicator may be developed under

one or more of the following methods: replacement cost new less depreciation (RCNLD), reproduction cost less depreciation (reproduction cost), and historic cost less depreciation (HCLD).

a) "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.

(1) Accounting. Depreciation, often called "book" or "accumulated" depreciation, is calculated according to generally accepted accounting principles or regulatory guidelines. It is the amount of capital investment written off on a firm's accounting records in order to allocate the original or historic cost of an asset over its life. Book depreciation is typically applied to historic cost to derive HCLD.

(2) Appraisal. Depreciation, sometimes referred to as "accrued" depreciation, is the difference between the market value of an improvement and its cost new. Depreciation is typically applied to replacement or reproduction cost, but should be applied to historic cost if market conditions so indicate. There are three types of depreciation:

(a) Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.

(b) Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.

(c) External, or economic, obsolescence is an impairment of an improvement due to negative influences from outside the boundaries of the property, and is generally incurable. These influences usually cannot be controlled by the property owner or user.

b) Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout. The use of replacement cost instead of reproduction cost eliminates the need to estimate some forms of functional obsolescence.

c) Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying any functional obsolescence.

d) Historic cost is the original construction or acquisition cost as recorded on a firm's accounting records. Depending upon the industry, it may be appropriate to trend HCLD to current costs. Only trending indexes commonly recognized by the specific industry may be used to adjust HCLD.

e) RCNLD may be impractical to implement; therefore the preferred cost indicator of value in a mass appraisal environment for unitary property is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost

estimate of value.

2. Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.

a) Yield Capitalization. The yield capitalization formula is CF/(k-g), where "CF" is a single year's normalized cash flow, "k" is the nominal, risk adjusted discount or yield rate, and "g" is the expected growth rate of the cash flow.

(1) Cash flow is restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function. Cash flow is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to working capital necessary to achieve the expected growth "g". Information necessary for the Division to calculate the cash flow shall be summarized and submitted to the Division by March 1 on a form provided by the Division.

(a) NOI is defined as net income plus interest.

(b) Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.

(c) Cash flow is to be projected for the year immediately following the lien date, and may be estimated by reviewing historic cash flows, forecasting future cash flows, or a combination of both.

. . . .

(2) The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields. WACC should reflect a typical capital structure for comparable companies within the industry.

(a) The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

(b) The cost of equity is estimated using standard methods such as the capital asset pricing model (CAPM), the Risk Premium and Dividend Growth models, or other recognized models.

i) The CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.

ii) The CAPM formula is k(e) = R(f) + (Beta x Risk Premium), where k(e) is the cost of equity and R(f) is the risk free rate.

a. The risk free rate shall be the current market rate on 20-year Treasury bonds.

b. The beta should reflect an average or value-weighted average of comparable companies and should be drawn consistently from Value Line or an equivalent source. The beta of the specific assessed property should also be considered.

c. The risk premium shall be the arithmetic average of the spread between the return on stocks and the income return on long term bonds for the entire historical period contained in the Ibbotson Yearbook published immediately following the lien date.

(3) The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and any future replacement assets.

(a) If insufficient information is available to the Division, either from public sources or from the taxpayer, to determine a rate, "g" will be the expected inflationary rate in the Gross Domestic Product Price Deflator obtained in Value Line. The growth rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

b) A discounted cash flow (DCF) method is impractical to implement in a mass appraisal environment, but may be used to value individual properties.

c) Direct Capitalization is an income technique that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by a capitalization rate or by multiplying the normalized income estimate by an income factor.

3. Market or Sales Comparison Approach. The market value of property is directly related to the prices of comparable, competitive properties. The market approach is estimated by comparing the subject property to similar properties that have recently sold.

a) Sales of comparable property must, to the extent possible, be adjusted for elements of comparison, including market conditions, financing, location, physical characteristics, and economic characteristics. When considering the sales of stock, business enterprises, or other properties that include intangible assets, adjustments must be made for those intangibles.

b) Because sales of unitary properties are infrequent, a stock and debt indicator may be viewed as a surrogate for the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's equity.

4. Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity,

and quality of data, as well as the strength and weaknesses of each value indicator. Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.

F. Property Specific Considerations. Because of unique characteristics of properties and industries, modifications or alternatives to the general value indicators may be required for specific industries.

1. Cost Regulated Utilities.

a) HCLD is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. HCLD is calculated by taking the historic cost less depreciation as reflected in the utility's net plant accounts, and then:

(1) subtracting intangible property;

(2) subtracting any items not included in the utility's rate base (e.g., deferred income taxes and, if appropriate, acquisition adjustments); and

(3) adding any taxable items not included in the utility's net plant account or rate base.

b) Deferred Income Taxes, also referred to as DFIT, is an accounting entry that reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude deferred income taxes from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by deferred income taxes for rate base regulated companies, they shall be removed from HCLD.

c) Items excluded from rate base under F.1.a)(2) or b) should not be subtracted from HCLD to the extent it can be shown that regulators would likely permit the rate base of a potential purchaser to include a premium over existing rate base.

. . . .

3. Utah Code Ann. §59-2-801 provides that the Commission shall apportion certain centrally-assessed property tax assessments, as follows in pertinent part:

(1) Before May 25 of each year, the commission shall apportion to each tax area the total assessment of all of the property the commission assesses as provided in Subsections (1)(a) through (f).

(a) (i) The commission shall apportion the assessments of the property described in Subsection (1)(a)(ii):

(A) to each tax area through which the public utility or company described in Subsection (1)(a)(ii) operates; and

(B) in proportion to the property's value in each tax area.

(ii) Subsection (1)(a)(i) applies to property owned by:
(A) a public utility, except for the rolling stock of a public utility;
(B) a pipeline company;
(C) a power company;

. . . .

DISCUSSION AND CONCLUSIONS OF LAW

The primary issue before the Commission is the fair market value of RESPONDENT's taxable Utah assets for property tax purposes for the 2004 and 2005 tax years. RESPONDENT is an (X) property subject to unitary assessment under Rule 62. For the years at issue, the Division prepared its Original Assessments pursuant to an Agreement methodology, which was different from the "preferred valuation methodologies" set forth in Rule 62. After the 2005 Hearing, the Commission ruled that the Division was not required to assess RESPONDENT's property using the Agreement methodology. At the Formal Hearing, the Division and the Counties both submitted appraisals, with each party claiming that its appraisals were prepared in accordance with Rule 62.

Although the Division's Original Assessments were submitted as evidence, no party relied upon these appraisals to estimate RESPONDENT's values at the Formal Hearing. Accordingly, the Commission finds that the Division's original assessed values are not entitled to a "presumption of correctness." *See Utah Railway Co. v. Utah State Tax Comm'n*, 5 P.3d 652, 655-656 (Utah 2000), *quoting, Utah PRODUCT & Light Co. v. Tax Comm'n*, 590 P.2d 332 (Utah 1979). Furthermore, the Commission ruled at the Formal Hearing that the Division's appraisals, which the Division purported to be prepared in accordance with Rule 62, are not entitled to a presumption of correctness, either.[166]

[166] At the Formal Hearing, the Commission was asked to rule whether the Division's exchanged appraisals were entitled to a presumption of correctness. The Commission ruled that the Division's new appraisals were not entitled to a presumption of correctness. Written notes taken during the Commission's recess to discuss the issue indicate that this is the Commission's ruling, even though the Transcript of the Formal Hearing appears ambiguous. Tr. (Sept. 18) at 69-70. Nevertheless, upon listening to the Commission's recording of the Formal Hearing, the Commission finds that the parties understood that it had ruled that the Division's exchanged appraisals would *not* be entitled to a presumption of correctness.

Accordingly, the Commission will determine a value for RESPONDENT's assets that it believes is best supported by the evidence and testimony submitted at the Formal Hearing.

A secondary issue concerns the method by which the Division apportioned RESPONDENT's Utah taxable value among the various Utah counties for the 2004 and 2005 tax years. After the Agreement methodology was implemented, the Division adjusted its usual practice of apportioning value based on the booked value of assets because RESPONDENT's booked value had been written down and was significantly less than the value that was determined with the Agreement methodology. Because the Commission has nullified the Agreement, the parties disagree on whether the Division's "adjusted" apportionment of RESPONDENT's value between the various counties should also be nullified.

I. Valuation of RESPONDENT's Assets.

For the tax years at issue, Rule 62 governs the valuation of unitary properties and applies to the valuation of RESPONDENT's assets. Section (D)(2) of the rule sets forth specific preferred valuation methodologies to value RESPONDENT's assets and provides that any party who proposes an alternative methodology must demonstrate, by a preponderance of evidence, that the alternative establishes a more accurate estimate of RESPONDENT's fair market value than would be established by the preferred methodology.

Cost Indicators

A. Pursuant to Rule 62(E)(1)(e), an HCLD cost indicator is the preferred cost indicator, for purposes of mass appraisal, to value RESPONDENT's assets, and a party who proposes a different cost indicator must establish, by a preponderance of the evidence, that the alternative establishes a more accurate cost estimate of value. RESPONDENT REP. 4 and PETITIONER REP. 2 both prepared

and submitted HCLD cost indicators in their respective appraisals. PETITIONER REP. 2, however, also prepared and submitted an RCNLD cost indictor in his appraisals and gave it equal weight with his HCLD cost indicator when reconciling final values for RESPONDENT's assets.

1. HCLD Cost Indicator. RESPONDENT REP. 4, after correcting for his original DFIT adjustment, concluded that the value of RESPONDENT's assets was approximately $$$$$ for both tax years. PETITIONER REP. 2 estimated the value to be approximately $$$$$ for the 2004 tax year and $$$$$ for the 2005 tax year. The primary issues concerning the appraisers' HCLD cost indicators involved whether a "write down" of RESPONDENT's assets upon its sale in YEAR is appropriate to consider when valuing the assets. A second issue concerns whether or not DFIT should be subtracted from the HCLD calculation. Although both RESPONDENT REP. 4 and PETITIONER REP. 2 agree that DFIT should not be subtracted for this particular taxpayer, RESPONDENT argues that it should be because the Division has subtracted DFIT when assessing all other (X) companies.

a. Write Down of RESPONDENT's Assets. The Commission concludes that the HCLD cost indicators prepared by RESPONDENT REP. 4 are more convincing than those prepared by PETITIONER REP. 2. First, the Commission finds that the YEAR transaction that resulted in the write down reflected on RESPONDENT's books was an extended, open process involving multiple willing buyers in which RESPONDENT's bid was selected by financially stable sellers.[167] RESPONDENT REP. 4's testimony concerning his knowledge about and his former company's participation in the bidding process of the assets convinces the Commission that the sale was not distressed. Also convincing was RESPONDENT REP. 4's testimony that the original costs of operating assets, or depreciated costs based on the historical costs, are typically given no weight by a willing buyer when bidding on assets similar to

[167] Tr. (Sept. 20) at 137-141; Tr. (Sept. 21) at 90-94, 109-110, 172.

those at issue.[168] Under the circumstances present in this matter, the Commission finds it plausible that the amounts written down reflected "obsolescence" associated with the assets, as RESPONDENT REP. 3 testified.

Second, RESPONDENT's assets were written down in accordance with GAAP and applicable FEDERAL COMMISSION accounting requirements.[169] Third, Rule 62(E)(1)(d) provides that "[h]istoric cost is the original construction or acquisition cost as recorded on a firm's accounting records." As a result, the rule's "preferred" HCLD method is calculated using the original construction or acquisition costs that are *reflected on the firm's records*. The Commission also notes that the Division has used written down amounts as the "historic costs" of other taxpayers, when such amounts were reflected in their books.

On the other hand, PETITIONER REP. 2 used the definition of "historic costs" found in the WSATA manual, not Rule 62, to calculate his HCLD estimates of value. The WSATA manual defines "historic cost" as the cost of the property when first constructed and placed into service,"[170] which is different from the definition found in the rule. Rule 62(E)(1)(e) allows a party to propose a method other than the preferred one, but only if the alternative method establishes a more accurate cost estimate of value. The assets at issue sold in YEAR for an amount that was less than their "original construction costs minus depreciation" and were written down in compliance with GAAP and FEDERAL COMMISSION requirements. Given these circumstances, the Commission is not convinced that the Counties' alternative method establishes a more accurate cost estimate of value than the preferred method. The Commission further finds that even if original costs were used, the totality of the evidence is compelling that a substantial economic obsolescence adjustment would be required. Furthermore, there is no indication that

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[168] Tr. (Sept. 21) at 103-104.
[169] Tr. (Sept. 20) at 172.
[170] Exhibit 5 at 20.

such an adjustment would be significantly different than the write down.

b. DFIT Adjustment. Rule 62(F)(1)(a)(2) provides that DFIT is subtracted when calculating a value for a *traditional* cost regulated utility using the HCLD cost indicator. The testimony and evidence submitted at the Formal Hearing convinces the Commission that RESPONDENT is a cost regulated utility that is rate regulated. Nevertheless, the Commission is not convinced that RESPONDENT is a *traditional* cost regulated utility for which a DFIT adjustment is appropriate, primarily because of the opinion of the appraisers who testified at the Formal Hearing and because a majority of RESPONDENT's sales are made to wholesale customers at market prices.

Although regulators have established a rate base that is used to determine the prices that RESPONDENT may charge to some of it customers, RESPONDENT REP. 4 clarified that RESPONDENT has been given permission to charge market prices for a portion of its (SALES). It appears from the evidence and testimony submitted at the Formal Hearing that the majority of RESPONDENT's sales are made at market prices, not at prices set by regulators using RESPONDENT's rate base.

Furthermore, the two appraisers who testified at the Formal Hearing, RESPONDENT REP. 4 and PETITIONER REP. 2, both indicated that RESPONDENT was atypical from other cost regulated utilities that receive the DFIT adjustment. Although RESPONDENT REP. 4 testified that RESPONDENT would be entitled to the DFIT adjustment if it were shown to be rate regulated, he never expressly recanted his statement that his original DFIT adjustments were in error. In addition, PETITIONER REP. 2 concluded that RESPONDENT was different from most other cost regulated utilities, in part because most of its sales were at market prices.

Although Rule 62 does not distinguish between a cost regulated utility whose sales are at prices primarily set by regulators and one whose sales are at prices primarily set by the market, both

appraisers agreed that RESPONDENT should not receive the DFIT adjustment because of its differences from the typical cost regulated utility. The Commission places a great deal of weight on the two appraisers' opinions when they are in harmony and when no other appraiser testifies otherwise. Furthermore, no party indicated that a partial DFIT adjustment might be preferable under RESPONDENT's circumstances.

For these reasons, the Commission is convinced, from the testimony and evidence submitted at the Formal Hearing, that an HCLD cost indicator for RESPONDENT should be calculated without a subtraction for DFIT. As a result, the Commission accepts RESPONDENT REP. 4's recommendation to eliminate the DFIT adjustments he made to his HCLD cost indicators. Accordingly, the Commission finds that the best estimate of RESPONDENT's value using an HCLD cost indicator are the "corrected" values recommended by RESPONDENT REP. 4.

2. RCNLD Cost Indicator. PETITIONER REP. 2 also developed RCNLD cost indicators. Although Rule 62(D)(2) provides that the HCLD cost indicator is the preferred cost methodology, Section (E)(1)(e) provides that a party may propose a different approach, RCNLD, if the different approach "establishes a more accurate cost estimate of value."

Although the Division has never calculated or applied an RCNLD cost indicator to any other (X) company, the Commission recognizes that it may be appropriate if it establishes a more accurate value for the assets being assessed. In this case, the Commission is not persuaded that PETITIONER REP. 2's RCNLD cost indicators establish better estimates of value for RESPONDENT's assets than the HCLD approaches used by RESPONDENT REP. 4.

To begin, PETITIONER REP. 2's RCNLD cost indicators are derived from the estimated construction costs of (WORDS REMOVED) that were announced around the time of the lien dates.

However, the ASSETS were either never completed or experienced cost overruns, raising serious questions about their actual costs and whether they were in fact sufficiently comparable to RESPONDENT's ASSETS. Second, although PETITIONER REP. 2 acknowledged that, in the 15 to 20 years prior to the lien date, few (WORDS REMOVED) had actually been constructed while over a hundred (WORDS REMOVED) had been completed in the United States, he did not consider any base load (WORDS REMOVED) as comparables to develop a replacement cost for RESPONDENT's ASSETS. Third, the Division points out that PETITIONER REP. 2's RCNLD approach relies upon a ratio based on his HCLD cost indicator, which the Commission has rejected. Finally, circumstances unique to RESPONDENT's ASSETS, including limitations of (X) sources and access to markets to sell the PRODUCT produced by the ASSETS, do not appear to have been adequately considered by PETITIONER REP. 2. Accordingly, the Commission rejects the use of PETITIONER REP. 2's RCNLD cost indicators and gives them no weight in reconciling a value for RESPONDENT's assets.

3. Cost Indicator Summary. The Commission finds RESPONDENT REP. 4's HCLD cost indicators (after the DFIT adjustments are eliminated) to be the best evidence of value for RESPONDENT's operating assets using a cost indicator. As a result, when reconciling a value final, the Commission will use the following cost indicator values:

	2004	**2005**
Value from Cost Approach:	$$$$$	$$$$$

Income Indicators

B. Rule 62(D)(2) provides that one of the two preferred methods to determine the fair market value of a unitary property is the yield capitalization income indicator as set forth in Section (E) of the rule. The appraisers differed in several of the components that comprise the yield capitalization

income formula, which resulted in a significant difference in the appraisers' estimates of value. RESPONDENT REP. 4 estimated the income indicator to be approximately $$$$$ for the 2004 year and $$$$$ for the 2005 year, while PETITIONER REP. 2 estimated the value to be approximately $$$$$ for the 2004 tax year and $$$$$ for the 2005 tax year. The Commission will analyze the critical components the appraisers used to determine the best estimate of value for RESPONDENT's assets using this preferred method.

The Commission recognizes that DCF is generally acknowledged as the best or most commonly used income indicator in standard business valuations. PETITIONER REP. 2 prepared a DCF income indicator of value for each year at issue to rebut the Division's estimates of value determined with the preferred yield capitalization income indicator. With his DCF income indicators, PETITIONER REP. 2 estimated that the value of RESPONDENT's assets would be approximately $$$$$ for the 2004 tax year and $$$$$ for the 2005 tax year. PETITIONER REP. 2 did not include his DCF income indicators as part of his appraisals, and the Counties submitted them as rebuttal evidence only. As a result, the Commission will only consider PETITIONER REP. 2's DCF income indicators to determine whether they show that the Division's estimates of value for RESPONDENT's assets using the preferred income indicator are incorrect.

1. Yield Capitalization Income Indicator. RESPONDENT REP. 4 and PETITIONER REP. 2 both calculated their respective yield capitalization indicators using the formula set forth in Section (E)(2)(a) of the rule. Both appraisers determined that expected growth, "g," would be %%%%%, but differed on their calculations of normalized cash flow, "CF", and the discount or yield rate, "k."

a. "CF" - Single Year's Normalized Cash Flow. According to Rule 62(E)(2)(a)(1), cash flow "is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and

deferred income taxes), less capital expenditures and additions to working capital necessary to achieve" the expected growth rate, %%%%%. NOI is defined as "net income plus interest." In calculating cash flows, RESPONDENT REP. 4 and PETITIONER REP. 2 primarily disagreed on their respective estimates of RESPONDENT's net operating income, capital expenditures and DFIT.

i) Net Operating Income ("NOI"). PETITIONER REP. 2 estimated RESPONDENT's NOI for the tax years at issue by averaging its NOI for the five-year period preceding each tax year. RESPONDENT REP. 4 concluded that a simple five-year average would overestimate "normalized" NOI for the years at issue because it would factor in the abnormally high NOI's of 2000 and 2001 that were a result of the STATE 1 (SITUATION) at that time. RESPONDENT REP. 4's conclusion was supported by the testimony of RESPONDENT REP. 3, RESPONDENT REP. 3, and RESPONDENT REP. 4.

The Commission is persuaded that the NOI's shown for RESPONDENT for 2000 and 2001 are anomalies that are unlikely to reoccur and, as a result, finds that they should be disregarded for purposes of estimating RESPONDENT's "normalized" NOI. In addition, the Commission is not convinced by PETITIONER REP. 2's assertions that the future projected cash flows reported by RESPONDENT in MODEL 1 are accurate representations of RESPONDENT's projected cash flows. Furthermore, the Commission is not convinced that PETITIONER REP. 2's "ratio on return" on net (X)[171] is a reliable estimate or check of NOI because the ratio is based on a cost value for net (X) that the Commission rejected earlier when discussing PETITIONER REP. 2's cost indicators.

For these reasons, the Commission finds that RESPONDENT REP. 4's estimates of RESPONDENT's NOI are reasonable. Accordingly, the Commission finds that RESPONDENT's normalized NOI is:

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[171] Tr. (Sept. 18) at 163-166.

	2004	2005
NOI to Estimate Cash Flows:	$$$$$	$$$$$

ii) Capital Expenditures and Depreciation. In RESPONDENT REP. 4's income indicator, he calculated RESPONDENT's normalized cash flow by assuming the amount for capital expenditures is equal to normalized depreciation and amortization expenses. RESPONDENT REP. 4 explained that the two figures would have to roughly equal each other over the long-term in order to maintain the (X) in an operating condition; an assumption that the Division used in assessing other centrally-assessed (X) properties.

Nevertheless, in his appraisals, RESPONDENT REP. 4 concluded that the "weighted average" of RESPONDENT's capital expenditures was approximately $$$$$ for the 2004 tax year and $$$$$ for the 2005 tax year. These amounts were approximately $$$$$ lower than the "normalized" capital expenditures he used in calculating RESPONDENT's cash flows for the two years at issue.

PETITIONER REP. 2 disagrees with RESPONDENT REP. 4. He asserts that because his estimated amounts are significantly higher than RESPONDENT's historical capital expenditures, RESPONDENT REP. 4 has underestimated RESPONDENT's expected cash flows, which results in a corresponding undervaluation of RESPONDENT's assets for the years at issue. Instead, PETITIONER REP. 2 averaged RESPONDENT's capital expenditures for the five-year period prior to each tax year, and determined that RESPONDENT's cash flow calculation should include a capital expenditures subtraction of approximately $$$$$ for the 2004 tax year and $$$$$$ for the 2005 tax year.

The Commission notes that RESPONDENT REP. 4 testified that a (WORDS REMOVED), such as the ASSET 1, should experience greater capital expenditures in the latter half of its design life, which he characterized as occurring after the (X)'s first 18 to 20 years. The ASSET 1 was constructed in YEAR 2, and was approximately 19 and 20 years old as of the 2004 and 2005 lien

dates respectively. Accordingly, the Commission concludes that the ASSET 1 is transitioning from a period where actual capital expenditures have generally been less than its total depreciation and amortization, to a period where its capital expenditures will likely increase at certain periods of time.

In spite of expectations for the future, the available historical information shows that RESPONDENT's capital expenditures have only equaled or exceeded it depreciation and amortization expenses in two years, specifically 1999 and 2000. Furthermore, no party provided specific, credible projections of the future capital expenditures that RESPONDENT is expected to incur. PETITIONER REP. 2's and RESPONDENT REP. 4's averages of capital expenditures are both significantly less than RESPONDENT's total amount of depreciation and amortization for the years at issue. Accordingly, the Commission is persuaded that, in RESPONDENT's specific circumstances for the tax years at issue, PETITIONER REP. 2's estimate of capital expenditures derived from historical evidence will result in a better estimate of RESPONDENT's normalized cash flow and value than the Division's calculation.

For the 2005 tax year, PETITIONER REP. 2's capital expenditures totaled approximately $$$$$ million, which was significantly less than the $$$$$ million shown for 2004 because one of the two years with higher capital expenditures was no longer considered in his historical average. The Commission believes that for purposes of calculating RESPONDENT's normalized cash flows, the amount of capital expenditures should be estimated at $$$$$ for each year at issue, given that the (X) is nearing or is now entering the latter half of its design life. Based on these specific circumstances and the evidence and testimony submitted at the Formal Hearing, the Commission does not find that RESPONDENT's capital expenditures will equal its depreciation and amortization expenses. Accordingly, the Commission concludes that the normalized amount of capital expenditures to calculate RESPONDENT's cash flow for each year at issue should be:

	2004	**2005**
Capital Expenditures to Estimate Cash Flows:	$$$$$	$$$$$

The Commission notes in making this determination, establishing the impact on cash from deprecation and capital expenditures is speculative. Although, in general the gross amount of depreciation for fully depreciated investments must equal capital expenditures, at any given point in time the true net present value of one or the other may be greater. Thus, without using a DCF model, and in the absence of detailed and fully supported estimates of future replacement capital expenditures, the Commission must rely on the best evidence available.

iii) DFIT Adjustment. In their respective analyses of historical DFIT, RESPONDENT REP. 4 and PETITIONER REP. 2 disagree on RESPONDENT's DFIT amounts for the years 2001 through 2004, specifically on whether DFIT is a positive or negative amount for each of these years. The DFIT amounts that PETITIONER REP. 2 used for the 2002, 2003, and 2004 tax years are supported by the information reported by RESPONDENT on its FEDERAL COMMISSION Forms No. 1 for the years ending December 31, 2003 and December 31, 2004. The DFIT amounts that RESPONDENT REP. 4 used are not only refuted by RESPONDENT's FEDERAL COMMISSION Forms No. 1, but in the case of the 2003 year, are also refuted by the information that RESPONDENT provided in its Annual Report.

Based on this evidence, the Commission finds that PETITIONER REP. 2's historical DFIT amounts are more accurate than RESPONDENT REP. 4's. As a result, the Commission will adopt the five-year DFIT averages that PETITIONER REP. 2 used to calculate his cash flow estimates. Accordingly, for purposes of determining RESPONDENT's normalized cash flow for the two years at issue, the Commission finds that RESPONDENT's DFIT adjustment is:

	2004	**2005**

DFIT Adjustment to Estimate Cash Flows:	$$$$$	$$$$$

iv) Additional Amortization Adjustment. RESPONDENT REP. 4, unlike PETITIONER REP. 2, increased cash flows by adding an amortization expense related to the ASSET 3 and ASSET 4, an addition which appears plausible and was not contested.[172] Accordingly, for purposes of determining RESPONDENT's normalized cash flow for the two years at issue, the Commission finds that the additional amortization adjustment should be:[173]

	2004	**2005**
Amortization Adjustment to Estimate Cash Flows:	$$$$$	$$$$$

v) Cash Flow Summary. The Commission has found RESPONDENT REP. 4's calculations of RESPONDENT's normalized cash flows to be more convincing than PETITIONER REP. 2's in all aspects except for his estimates of capital expenditures and DFIT. As discussed above, the Commission will substitute an $$$$$ capital expenditures amount into RESPONDENT REP. 4's cash flow calculation for each year at issue. In addition, the Commission will substitute a $$$$$ DFIT adjustment for the 2004 tax year and a $$$$$ DFIT adjustment for the 2005 tax year into the calculation. Otherwise, the Commission will use RESPONDENT REP. 4's components. As a result, the Commission finds that for purposes of the yield capitalization income indicator, RESPONDENT's normalized cash flows should be, as follows:

	2004	**2005**
Net Operating Income[174]	$$$$$	$$$$$

[172] Tr. (Sept. 19) at 206-207; Exhibit 16A at page after PTD 0012; Exhibit 16B at PTD 0037.
[173] Id.
[174] The Net Operating Income, Depreciation, and Amortization amounts are obtained from the Division's appraisal. The DFIT amounts and the 2004 Capital Expenditure amount are obtained from PETITIONER REP. 2 appraisal. The Commission determined to use the 2004 Capital Expenditure amount for 2005, as well.

+ Depreciation	$$$$$	$$$$$
+ Amortization	$$$$$	$$$$$
+ DFIT	$$$$$	$$$$$
- Capital Expenditures	($$$$$)	($$$$$)
Normalized Cash Flows	$$$$$	$$$$$

b. "k"- Nominal, Risk Adjusted Discount or Yield Rate. Rule 62(E)(2)(a)(2) provides the preferred calculation for the discount rate. Both the Division and PETITIONER REP. 2 used the same cost of debt in establishing their respective capitalization rates. They differed however on their respective calculations of the cost of equity for both years at issue and, for the 2005 tax year only, on the weight they gave the cost of equity in correlating their capitalization rates.

i) Cost of Equity. Both parties calculated a historical CAPM cost of equity, which is the preferred method, and gave it at least 50% weight as provided in the rule. The Commission finds the historical CAPM costs of equity prepared by PETITIONER REP. 2 to be more convincing than those prepared by the Division because PETITIONER REP. 2 used guideline companies that are more "specific" to RESPONDENT and because one of the Division's guideline companies appears to have been in some financial distress during the years at issue.

The Commission also finds that the ex ante CAPM method prepared by PETITIONER REP. 2 would qualify as a "recognized model" and that it would be reasonable to give this method some weight in correlating the cost of equity. In addition, the Commission notes that the DGM method used by PETITIONER REP. 2, but not the Division, is specifically listed as a recognized model in the rule and that it would be reasonable to give this method some weight, as well. Finally, the Commission notes that the Risk Premium model used by the Division, but not PETITIONER REP. 2, is also specifically listed as a recognized model in the rule and that it would be reasonable to give it some weight in the correlation process. However, the Commission notes that the Division inexplicably developed two different Risk

Premium models for the 2004 tax year, but only one of the models for the 2005 tax year. Accordingly, the Commission will only consider and give some weight to the Risk Premium model the Division used in both years, specifically the model developed from ValueLine's Relative Financial Strength Rating.

Based on these conclusions, the Commission finds that PETITIONER REP. 2's approach to estimate the cost of equity is preferable to the Division's, with the exception of including some weight for the Risk Premium model that the Division developed. Accordingly, the Commission finds that the cost of equity to use in establishing a capitalization rate for RESPONDENT for the two years at issue should be calculated, as follows:

	2004	**2005**
CAPM (historical)[175]	%%%%% (%%%%% weight)	%%%%% (%%%%% weight)
CAPM (ex ante)	%%%%% (%%%%% weight)	%%%%% (%%%%% weight)
Risk Premium Model (Value Line Financial Strength)	%%%%% (%%%%% weight)	%%%%% (%%%%% weight)
Dividend Growth Model	%%%%% (%%%%% weight)	%%%%% (%%%% weight)
Cost of Equity	%%%%%	%%%%%

ii) Weighting the Cost of Equity and Cost of Debt. PETITIONER REP. 2 stated that because RESPONDENT is primarily debt-financed, the cost of equity should not be weighted more than %%%%% in establishing a capitalization rate. The Commission finds his argument and conclusion to be reasonable. Furthermore, there is no indication why the Division increased the weight it gave the cost of equity from %%%%% for the 2004 tax year to %%%%% for the 2005 tax year. Accordingly, the Commission finds that the cost of equity and the cost of debt should each be weighted %%%%% in correlating a capitalization rate for each of the years at issue.

iii) Capitalization Rate Summary. Based on the foregoing, the Commission finds

[175] The CAPM (Historical), CAPM (ex ante), and Dividend Growth model rates were obtained from PETITIONER REP. 2's appraisal. The Risk Premium Model rates were obtained from the Division's appraisal.

that the following capitalization rates should be used in the yield capitalization income indicators to establish a value for RESPONDENT assets for each year at issue:

	2004	**2005**
Cost of Debt[176]	%%%%% (%%%%% weight)	%%%%% (%%%%% weight)
Cost of Equity	%%%%% (%%%%% weight)	%%%%% (%%%%% weight)
Capitalization Rate	%%%%%	%%%%%

c. Yield Capitalization Income Indicator Summary. Based on the foregoing, the Commission finds that the yield capitalization income indicator to value RESPONDENT's Utah assets for the years at issue should be calculated as follows:

	2004	**2005**
Normalized Cash Flow	$$$$$	$$$$$
÷ (Capitalization Rate – 0% Growth)	÷ %%%%%	÷ %%%%%
Value Shown by Yield Capitalization Income Indicator:	$$$$$	$$$$$

2. Discounted Cash Flow. The Commission is not convinced that PETITIONER REP. 2's DCF indicators of value effectively refute the Division's estimates of value or support his own estimates of value. First, the Commission is not convinced that the information in MODEL 1, with which PETITIONER REP. 2 derived his DCF indicators, accurately reflects RESPONDENT's future cash flows. The historic capital expenditures experienced by RESPONDENT in the years 1999 through 2004, as discussed earlier, are much greater than the $$$$$ to $$$$$ of estimated capital expenditures reflected in MODEL 1 for years 2005 through 2025.[177] The Commission would expect RESPONDENT's capital expenditures to increase, not decrease, for future years given that the ASSET 1 is entering or will soon be

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[176] Exhibit 5 at exhibits 9 and 9a; Exhibit 16A at PTD 0014; Exhibit 16B at PTD 0039.
[177] Exhibit 17A at PTD 0438-0441; Exhibit 17B at PTD 0237-240.

entering the latter half of its design life. Furthermore, RESPONDENT REP. 7 has convincingly explained that because RESPONDENT's creditors must approve any capital expenditures, MODEL 1 does not reflect future capital expenditures that have yet to be approved.

The Commission also finds that RESPONDENT REP. 3, who participated in preparing MODEL 1, is better qualified than PETITIONER REP. 2 to understand MODEL 1. Because parties other than RESPONDENT participate in preparing MODEL 1 to determine the amounts that RESPONDENT may pay on its outstanding debt, the Commission finds that MODEL 1 was not designed to estimate RESPONDENT's future cash flows. Accordingly, the Commission is not persuaded that the model is reliable for valuation purposes.

Furthermore, the Commission is neither convinced that the value that PETITIONER REP. 2 attributed to RESPONDENT's STATE 3 (WORDS REMOVED) is reflective of its actual value, nor that the revenues and expenses for the (X) are adequately reflected in his DCF model. Accordingly, the Commission places no weight on PETITIONER REP. 2's DCF indicators of value when correlating a final value for RESPONDENT's assets.

3. Income Indicator Summary. The Commission finds the yield capitalization indicator discussed above to be the best evidence of value for RESPONDENT's operating assets using an income approach. Accordingly, when reconciling a value final, the Commission will use the following income indicator values:

	2004	**2005**
Value from Income Approach:	$$$$$	$$$$$

Market Approach

Although the stock and debt market approach is acknowledged as a valuation method in Rule 62(E)(3)(b), it is not one of the preferred methods specified in the rule to value an (X) property.

The Commission is not persuaded that PETITIONER REP. 2's stock and debt approach establishes a better estimate of value for RESPONDENT's Utah assets than the preferred methodologies, as allowed under Rule 62.

First, RESPONDENT is a company with no publicly traded stock. The Division argues that under such circumstances, the stock and debt approach is subjective, an argument that the Commission considers reasonable. Second, it appears that the reports from which PETITIONER REP. 2 imputed his equity value and debt value for RESPONDENT included information for assets located not only in Utah, but also in STATE 3 (i.e., the (WORDS REMOVED) and its related assets). RESPONDENT REP. 3 explained that a significant portion of RESPONDENT's debt was associated with the (WORDS REMOVED) and, as a result, should have been removed from PETITIONER REP. 2's calculation of the debt value. Furthermore, RESPONDENT REP. 3 explained that PETITIONER REP. 2 overestimated the amount of RESPONDENT's accumulated DFIT in estimating his equity value. Finally, the Commission is not comfortable with substituting retained earnings, and the other factors used by PETITIONER REP. 2, for actual stock prices.

For these reasons, the Commission is not convinced that PETITIONER REP. 2's stock and debt approach has established a better estimate of value for RESPONDENT's Utah assets than the preferred valuation methods. Accordingly, the Commission places no weight on PETITIONER REP. 2's stock and debt market indicators of value when reconciling a final value for RESPONDENT's assets.

(PORTION VACATED DUE TO STIPULATION)

DATED this ___________ day of ________________________, 2007.

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Kerry R. Chapman

Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this ___________ day of ________________________, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63-46b-13 et seq.

KRC/04-0820.fof2 & 05-0818.fof2