

**R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-302.**

(1) Definitions:

(a) "Utah fair market value" means the fair market value of that portion of the property of a project entity located within Utah upon which the fee in lieu of ad valorem property tax may be calculated.

(b) "Fee" means the annual fee in lieu of ad valorem property tax payable by a project entity pursuant to Section 11-13-302.

(c) "Energy supplier" means an entity that purchases any capacity, service or other benefit of a project to provide electrical service.

(d) "Exempt energy supplier" means an energy supplier whose tangible property is exempted by Article XIII, Sec. 3 of the Constitution of Utah from the payment of ad valorem property tax.

(e) "Optimum operating capacity" means the capacity at which a project is capable of operating on a sustained basis taking into account its design, actual operating history, maintenance requirements, and similar information from comparable projects, if any. The determination of the projected and actual optimum operating capacities of a project shall recognize that projects are not normally operated on a sustained basis at 100 percent of their designed or actual capacities and that the optimum level for operating a project on a sustained basis may vary from project to project.

(f) "Property" means any electric generating facilities, transmission facilities, distribution facilities, fuel facilities, fuel transportation facilities, water facilities, land, water or other existing facilities or tangible property owned by a project entity and required for the project which, if owned by an entity required to pay ad valorem property taxes, would be subject to assessment for ad valorem tax purposes.

(g) "Sold," ~~[for the purpose of interpreting Subsection (4),]~~ means the ~~[first]~~ sale of ~~[the]~~ capacity, service, or other benefit produced by the project. ~~[without regard to any subsequent sale, resale, or lay-off of that capacity, service, or other benefit.]~~

(h) "Taxing jurisdiction" means a political subdivision of this state in which any portion of the project is located.

(i) All definitions contained in Section 11-13-103 apply to this rule.

(2) The Tax Commission shall determine the fair market value of the property of each project entity. Fair market value shall be based upon standard appraisal theory and shall be determined by correlating estimates derived from the income and cost approaches to value described below.

(a) The income approach to value requires the imputation of an income stream and a capitalization rate. The income stream may be based on recognized indicators such as average income, weighted income, trended income, present value of future income streams, performance ratios, and discounted cash flows. The imputation of income stream and capitalization rate shall be

39 derived from the data of other similarly situated companies. Similarity shall be based on factors  
40 such as location, fuel mix, customer mix, size and bond ratings. Estimates may also be imputed  
41 from industry data generally. Income data from similarly situated companies will be adjusted to  
42 reflect differences in governmental regulatory and tax policies.

43 (b) The cost approach to value shall consist of the total of the property's net book value of  
44 the project's property. This total shall then be adjusted for obsolescence if any.

45 (c) In addition to, and not in lieu of, any adjustments for obsolescence made pursuant to  
46 Subsection (2)(b), a phase-in adjustment shall be made to the assessed valuation of any new project  
47 or expansion of an existing project on which construction commenced by a project entity after  
48 January 1, 1989 as follows:

49 (i) During the period the new project or expansion is valued as construction work in  
50 process, its assessed valuation shall be multiplied by the percentage calculated by dividing its  
51 projected production as of the projected date of completion of construction by its projected optimum  
52 operating capacity as of that date.

53 (ii) Once the new project or expansion ceases to be valued as construction work in progress,  
54 its assessed valuation shall be multiplied by the percentage calculated by dividing its actual  
55 production by its actual optimum operating capacity. After the new project or expansion has  
56 sustained actual production at its optimum operating capacity during any tax year, this percentage  
57 shall be deemed to be 100 percent for the remainder of its useful life.

58 (3) If portions of the property of the project entity are located in states in addition to Utah  
59 and those states do not apply a unit valuation approach to that property, the fair market value of the  
60 property allocable to Utah shall be determined by computing the cost approach to value on the basis  
61 of the net book value of the property located in Utah and imputing an estimated income stream  
62 based solely on the value of the Utah property as computed under the cost approach. The correlated  
63 value so determined shall be the Utah fair market value of the property.

64 (4)(a) Before fixing and apportioning the Utah fair market value of the property to the  
65 respective taxing jurisdictions in which the property, or a portion thereof is located, the Utah fair  
66 market value of the property shall be reduced by the percentage of the capacity, service, or other  
67 benefit sold by the project entity to exempt energy suppliers.

68 (b) The Utah fair market value of the property may not be reduced by any capacity, service,  
69 or other benefit sold by the project entity to an exempt energy supplier if the capacity, service, or  
70 other benefit is subsequently resold or laid off by the exempt energy supplier to an energy supplier  
71 whose tangible property is not exempted by Utah Constitution, Article XIII, Section 3, from the  
72 payment of ad valorem property tax.

73 (5) For purposes of calculating the amount of the fee payable under Section 11-13-302(3),  
74 the percentage of the project that is used to produce the capacity, service or other benefit sold shall  
75 be deemed to be 100 percent, subject to adjustments provided by this rule, from the date the project  
76 is determined to be commercially operational.

77 (6) In computing its tax rate pursuant to the formula specified in Subsection 59-2-924(4),  
78 each taxing jurisdiction in which the project property is located shall add to the amount of its  
79 budgeted property tax revenues the amount of any credit due to the project entity that year under  
80 Section 11-13-302(3), and shall divide the result by the sum of the taxable value of all property

81 taxed, including the value of the project property apportioned to the jurisdiction, and further  
82 adjusted pursuant to the requirements of Section 59-2-924.

83 ~~[(7) Subsections (2)(a) and (2)(b) are retroactive to the lien date of January 1, 1984.~~  
84 ~~Subsection (2)(c) is effective as of the lien date of January 1, 1989. The remainder of this rule is~~  
85 ~~retroactive to the lien date of January 1, 1988.]~~