

1 **CALIFORNIA STATE BOARD OF EQUALIZATION**

2 **SUMMARY DECISION UNDER REVENUE AND TAXATION CODE SECTION 40**

3  
4 In the Matter of the Petition for )  
5 Reassessment of the 2017 Unitary Value for: )

6 **LA PALOMA GENERATING** )  
7 **COMPANY, LLC (1112)** )

8 Petitioner )

Appeal No.: SAU 17-012

Case ID No.: 1017428

9 Oral Hearing date:  
December 14, 2017<sup>1</sup>

10  
11 Representing the Parties:

12 For the Petitioner:

C. Stephen Davis, Attorney at Law  
David Grant, Representative

13  
14 For the Respondent:

Sarah J. Garrett, Tax Counsel  
Attorney for State-Assessed Properties Division

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16 Samuel Wang, Business Taxes Administrator III (Acting)  
State-Assessed Properties Division

17  
18 Counsel for Appeals Bureau:

Dana R. Brown, Tax Counsel III (Supervisor)

19 **VALUES AT ISSUE**

	Value	Penalty	Total
20 2017 Board-Adopted Unitary Value	\$62,600,000	\$0	\$62,600,000
21 Petitioner's Requested Unitary Value	\$604,000	\$0	\$604,000
22 Respondent's Appeal Recommendation	\$59,700,000	\$0	\$59,700,000

23  
24 **Factual Background**

25 La Paloma Generating Company LLC (Petitioner) is a wholly-owned subsidiary of La Paloma  
26 Acquisition Company, LLC (LPAC). Petitioner owns and operates a 1,048-megawatt (MW)

27  
28 <sup>1</sup> At the oral hearing, by majority vote of the members, the Board granted the petition for reassessment, in part, and reduced the 2017 Board-adopted unitary value of \$62,600,000 to \$59,700,000. Chairwoman Harkey, Member Ma, Member Horton,

1 combined-cycle, natural gas-fired power generation facility near McKittrick in Kern County, California  
2 that has been operating since March 2003. Petitioner’s facility has four equal-sized ABB GT24-B  
3 combustion generation units, coupled with Alstom KA24-1 combined-cycle power units and natural  
4 gas and electric transmission facilities.

5 The 2017 Board-adopted unitary value of \$62,600,000 for Petitioner’s facility is based on  
6 50-percent reliance on the ReplCLD value indicator and 50-percent reliance on the CEA value  
7 indicator.

8 **Legal Issue 1: Whether Petitioner Has Shown That Respondent Failed To Account For All**  
9 **Obsolescence in Petitioner’s 2017 Board-Adopted Unitary Value.**

10 **Findings of Fact and Related Contentions**

11 Petitioner contends that its 2017 Board-adopted unitary value should be adjusted for additional  
12 obsolescence. In support of its contention, Petitioner argues that the ReplCLD value indicator was  
13 “unreliable” under the conditions prevailing on lien date 2017 given the presence of “very substantial”  
14 obsolescence. Petitioner further argues that the “highest and best use” of its facility is no longer for  
15 power generation and Respondent, therefore, no longer has assessment jurisdiction. Petitioner also  
16 asserts that the CEA value indicator improperly includes the value of intangible assets which Petitioner  
17 describes as revenue based on out-of-market energy prices and other revenues based on favorable  
18 contracts not generally available to market participants contrary to the holding in *Elk Hills Power, LLC*  
19 *v. Board of Equalization* (2011) 57 Cal.4th 593.

20 Additionally, Petitioner contends that the CEA value indicator does not reflect the economic  
21 impact of the State’s “official policy” to convert the State’s electrical generation base to renewable  
22 energy and to “cause gas-fired merchant generators to shut-in” without any provision to reimburse  
23 owners for investments stranded as a result of the alleged policy. Petitioner, however, asserts that  
24 Property Tax Rule (Rule) 8 dictates that the CEA value indicator, and not the ReplCLD value indicator,  
25 is the “most suitable” method to determine the assessed value of Petitioner’s property because reliable  
26 sales data is not available here and Petitioner’s property has suffered considerable obsolescence.

27  
28 and Controller Yee voted to grant the petition for reassessment, in part, and reduce the 2017 Board-adopted unitary value of  
\$62,600,000 to \$59,700,000. Member Runner voted no.

1 Respondent asserts that Petitioner claims both excess capacity and additional economic  
2 obsolescence exist, but fails to specify how Respondent did not account for these claims. Respondent  
3 contends that Petitioner further fails to provide any calculations that quantify or measure the excess  
4 capacity and additional obsolescence it claims, but instead, merely asserts that the ReplCLD value  
5 indicator does not reflect adequate obsolescence and should be adjusted to the CEA value indicator or not  
6 considered at all.

7 Respondent argues that it has adequately reflected all forms of depreciation (physical  
8 deterioration, economic, and functional obsolescence) based on the information Petitioner provided.  
9 Respondent contends that the ReplCLD value indicator of \$85,155,387 for the lien date 2017 reflects a  
10 total adjustment of \$844,671,978 (or 93-percent) comprised of adjustments of approximately  
11 \$434,600,000 for physical deterioration, approximately \$167,600,000 for under-utilization (economic  
12 obsolescence), approximately \$182,900,000 for diminished spark spread (additional economic  
13 obsolescence related to a diminished gross margin), approximately \$14,250,000 for heat rate  
14 adjustment (functional obsolescence), and approximately \$45,300,000 for excess operating costs  
15 (functional obsolescence).

16 Respondent also notes that Petitioner states that its opinion of value is based on orderly  
17 liquidation value, but Petitioner has failed to provide any evidence or documentation that is in fact in  
18 the process of shutting down or is liquidating the assets of its facility. Respondent notes that, to the  
19 contrary, Petitioner's facility is still currently in operation as of the lien date 2017. Respondent,  
20 therefore, concludes that Petitioner's contention that the "highest and best use" of its facility is  
21 something other than an electric generation facility is "factually inconsistent." Respondent asserts that  
22 its adjustments for obsolescence are sufficient, and Petitioner has not shown that any further adjustment  
23 is warranted.

24 In Petitioner's Appeals Conference Statement (ACS), Petitioner renews its contention that  
25 Respondent failed to account for all obsolescence in its 2017 Board-adopted unitary value. Petitioner  
26 argues that just because Petitioner made "some adjustment" for economic obsolescence, it does not  
27 mean that it made "enough adjustment." Petitioner asserts that the reasonableness of Respondent's  
28 adjustments and the Board-adopted unitary value based on the cost approach must be verified and



1 the Board's replacement cost new trend factors and "percent" good factors. Obsolescence may occur  
2 when property is outmoded (functional obsolescence) or when some event has substantially diminished  
3 the future earning power of the property (economic obsolescence). (*See Assessors' Handbook* section  
4 501, *Basic Appraisal* (January 2002), pp. 81-83.) Functional obsolescence is the loss of value in a  
5 property caused by the property's loss of capacity to perform the function for which it was intended.  
6 (*Id.* at p. 81.) Economic obsolescence is the diminished utility of a property due to adverse factors  
7 external to the property being appraised and is incurable by the property owner. (*Id.* at p. 82.)

8 The percent good factors, the basis for adjusting the RCN into an indicator of fair market value,  
9 are used to determine the remaining value of a property and are complements of physical deterioration  
10 and functional obsolescence. The factors used for a given property type are based on the expected  
11 economic life of that property type which is based on a service life study that surveys industry  
12 participants who own that type of property. (*Unitary Valuation Methods* (March 2003) (UVM), p. 30.)

13 In addition to economic life, there are four other variables that have an effect on percent good  
14 factors. These variables are: the rate of return, the method of calculation, the survivor curve, and the  
15 presence of an income adjustment factor. In the State-Assessed Properties Division these variables are  
16 determined as follows: rate of return annually established by Property Tax Department, single-life  
17 calculation method, R3 survivor curve and the use of an income adjustment factor reflecting a 10-  
18 percent decline over average life. Petitioner has the burden of establishing the existence of any  
19 additional or extraordinary obsolescence. (*See Property Tax Rule 6, subs. (d) & (e); Cal. Bd. of*  
20 *Equalization, Assessors' Handbook § 502, Advanced Appraisal* (December 1998) (AH 502), p. 20-21;  
21 UVM, p. 30.)

### 22 **Income Approach to Value**

23 Property Tax Rule 8, subdivision (a) states that "the income approach is used in conjunction  
24 with other approaches when the property under appraisal is typically purchased in anticipation of a  
25 money income and either has an established income stream or can be attributed a real or hypothetical  
26 income stream by comparison with other properties." Subdivision (b) describes the income approach to  
27 value as the valuation method whereby, "an appraiser values an income property by computing the  
28 present worth of a future income stream. This present worth depends upon the size, shape, and duration

1 of the estimated stream and upon the capitalization rate at which future income is discounted to its  
2 present worth.” Subdivision (c) provides that “the amount to be capitalized is the net return which a  
3 reasonably well-informed owner and reasonably well-informed buyers may anticipate on the valuation  
4 date that the taxable property existing on that date will yield under prudent management and subject to  
5 legally enforceable restrictions as such persons may foresee as of that date.”

### 6 Analysis and Disposition

7 Respondent is presumed to have correctly determined the value of the property at issue, and  
8 petitioner bears the burden of proving otherwise. Here, Respondent calculated a total of \$844,671,978  
9 in adjustments for depreciation from all sources (physical, functional, and economic obsolescence) to  
10 the ReplCLD value indicator for Petitioner’s property. In support of its position for an additional  
11 obsolescence adjustment, however, Petitioner contends that Respondent should not place any reliance  
12 on the ReplCLD value indicator because it is “entirely void” and the CEA value indicator is “materially  
13 overstated.” We find that Petitioner has, however, failed to identify and quantify any additional  
14 obsolescence which it asserts Respondent has not recognized in accordance with Rule 8. Accordingly,  
15 we find that Petitioner has not presented sufficient evidence to meet its burden of proof to show that  
16 any further adjustments for additional obsolescence are warranted.

### 17 **Issue 2: Whether Petitioner Has Shown that Respondent Erred in Calculating the CEA Value** 18 **Indicator.**

#### 19 Findings of Fact and Related Contentions

20 Petitioner contends that Respondent erred in calculating the CEA value indicator. Petitioner  
21 contends that the CEA indicator is a negative \$189 million based on “market parameters prevailing on  
22 the lien date.” Petitioner provides its cash flow diagram attached as Exhibit 1. Petitioner further  
23 contends that negative cash flows fail to satisfy the economic feasibility component of the highest and  
24 best use consideration and, therefore, the highest and best use of the facility must be reconsidered.  
25 Petitioner argues that an informed buyer would not pay \$62,600,000 (the Board-adopted unitary value)  
26 for a facility which Respondent determined could only generate a revenue stream supporting a CEA  
27 value indicator of \$40,000,000.

28 Petitioner also asserts that the CEA value indicator reflects “out-of-market” and “favorable

1 contract” revenues not available to other market participants. Petitioner argues that Respondent  
2 erroneously based its CEA value indicator on revenue streams that include revenue from non-taxable  
3 intangibles in violation of *Elk Hills Power*, supra, 57 Cal.4th 593. Petitioner also argues that the CEA  
4 value should be calculated using Petitioner’s projected revenue. Finally, Petitioner argues that the CEA  
5 value indicator does not reflect the economic impact of the State’s policy to convert California’s  
6 electrical generation base to renewable energy, leaving the only option for gas-fired merchant  
7 generators, such as Petitioner, to liquidate.

8 Respondent argues that while Petitioner contends that Respondent incorrectly calculated the  
9 CEA value indicator, Petitioner has failed to quantify or provide documentation to show that the CEA  
10 value indicator calculated by Respondent is inappropriate, nor has it provided documentation to support  
11 its claim that Respondent’s CEA value indicator reflects “out-of-market” and “favorable contract”  
12 revenues or revenues from non-taxable intangibles. Respondent asserts that Petitioner’s projections are  
13 unreliable based on the “significant disparity” between Petitioner’s past projections as reported on  
14 Schedule H of its property statement and its actual operating results. Because Respondent determined  
15 that Petitioner’s income projections are unreliable, Respondent calculated the CEA value indicator  
16 using the average of the past two years’ actual income. Respondent also notes that Petitioner has not  
17 provided its actual 2017 operating results to date so that Respondent may evaluate such data in light of  
18 Petitioner’s projections. Respondent believes this to be the best information available to use in its CEA  
19 calculations because it is based on actual historical operating income.

## 20 Applicable Law

### 21 Burden of Proof

22 Assessing officers are presumed to have properly performed their duties. (Evid. Code, § 664.)  
23 Therefore, the petitioner has the burden of showing that the assessment is incorrect or illegal. (*ITT*  
24 *World Communications v. Santa Clara* (1980) 101 Cal.App.3d 246; see also Cal. Code Regs., tit. 18, §  
25 5080 subd. (a).)

### 26 Income Approach to Value

27 Property Tax Rule 8, subdivision (a) states that “the income approach is used in conjunction  
28 with other approaches when the property under appraisal is typically purchased in anticipation of a

1 money income and either has an established income stream or can be attributed a real or hypothetical  
2 income stream by comparison with other properties.” Subdivision (b) describes the income approach to  
3 value as the valuation method whereby, “an appraiser values an income property by computing the  
4 present worth of a future income stream. This present worth depends upon the size, shape, and duration  
5 of the estimated stream and upon the capitalization rate at which future income is discounted to its  
6 present worth.” Subdivision (c) provides that “the amount to be capitalized is the net return which a  
7 reasonably well-informed owner and reasonably well-informed buyers may anticipate on the valuation  
8 date that the taxable property existing on that date will yield under prudent management and subject to  
9 legally enforceable restrictions as such persons may foresee as of that date.”

#### 10 Analysis and Disposition

11 Respondent is presumed to have determined correctly the value of the property at issue, and  
12 Petitioner bears the burden of proving error. Here, Petitioner argues that Respondent erred in  
13 calculating the CEA value indicator. Petitioner’s forecasts also indicate a high degree of  
14 unpredictability due to the significant discrepancies between Petitioner’s past projections reported on  
15 Schedule H of its property statement and its actual operating results. Property Tax Rule 8 provides that  
16 reliance on the income approach is appropriate when the property has an “established income stream or  
17 can be attributed a real or hypothetical income stream by comparison with other properties.” In the  
18 view of the Appeals Bureau, the factors and circumstances that affect electricity prices as described by  
19 Petitioner and the unreliability of Petitioner’s income forecasts indicate a high degree of  
20 unpredictability in the level of future income. Therefore, we find that Petitioner has not shown  
21 evidence of an established income stream for its facility as required by Rule 8. In addition, Petitioner  
22 has not presented sufficient evidence quantifying its contention that Respondent incorrectly calculated  
23 the CEA value indicator. We, therefore, find that Petitioner has not presented sufficient evidence  
24 showing that Respondent failed to place proper reliance on the value indicators in the determination of  
25 petitioner’s 2017 Board-adopted unitary value.

26 **Issue 3: Whether Petitioner Has Shown That Respondent Failed To Place Proper Reliance on the**  
27 **Value Indicators in Determining Petitioner’s 2017 Board-Adopted Unitary Value.**

#### 28 Findings of Fact and Related Contentions



1           Petitioner argues that Respondent has failed to place the proper reliance on the value indicators  
2 in determining Petitioner’s 2017 Board-adopted unitary value. Petitioner contends that Respondent’s  
3 50/50 weighting of the value indicators is “arbitrary.” Petitioner asserts that “[m]erely taking an  
4 average of or weighting disparate value indicators is not correct reconciliation, particularly where the  
5 ReplCLD value indicator is “entirely void” and the CEA value indicator is “materially overstated.”

6           Respondent contends that 50-percent reliance on the ReplCLD value indicator and 50-percent  
7 reliance on the CEA value indicator is appropriate for valuing Petitioner’s facility. Petitioner asserts  
8 that while CEA value indicator is normally calculated from projected revenues, fuel costs, and  
9 operating expenses provided by an assessee, Respondent calculated its CEA value indicator based on  
10 Petitioner’s two most recent years of actual operating results. Respondent finds the following  
11 assumptions within Petitioner’s revenue forecast to be unreliable and problematic: Petitioner’s past  
12 actual operating results reflect significant differences when compared to projected amounts reported on  
13 Schedule H; Petitioner’s projections suggest a plan to discontinue operations and shutdown the facility,  
14 but Petitioner has not provided any manifestation of this intention to Respondent and the facility  
15 continues to operate; and Petitioner’s projected generation levels are inconsistent with the amounts  
16 projected for major maintenance, in view of its intent to pursue an orderly liquidation, closure, or  
17 shutdown. Accordingly, Respondent contends that its equal reliance on the ReplCLD and CEA value  
18 indicators is appropriate here and is the result of its thorough analysis of the financial data provided by  
19 Petitioner as well as full consideration of the market conditions and challenges facing the electric  
20 generation industry.

21           In its reply, Petitioner renews its contention that the “viability and validity” of the ReplCLD  
22 value indicator must be established and not “simply assumed and taken for granted.” Petitioner  
23 contends that just because “*some* adjustment is made for economic obsolescence, that does not mean  
24 that *enough* adjustment was made.” Petitioner alleges that the reasonableness of the adjustments made  
25 and the value conclusion based on the cost approach “is not a given to be automatically accepted – it  
26 must be verified.” Petitioner contends that in the Board of Equalization’s (the Board) Guidelines for  
27 Substantiating Additional Obsolescence, the Board instructs that an appraiser cannot assume that any  
28 valuation approach automatically provides the best indicator of value, and all available information

1 must be analyzed to determine the best indicator of value. Petitioner continues to note that the Board's  
2 Guidelines for Substantiating Additional Obsolescence state that the cost approach is most reliable  
3 when "the property being appraised is relatively new and has experienced little depreciation."  
4 Therefore, Petitioner argues that the cost indicator must first be tested for reasonableness, especially  
5 where the subject property is not new and there is more than a "little" depreciation before the cost  
6 indicator may be considered.

7 Petitioner continues to argue that Respondent does not establish that its ReplCLD value  
8 indicator is economically viable, and alleges that Respondent's CEA value indicator demonstrates that  
9 ReplCLD value indicator has not been sufficiently reduced for economic obsolescence. Petitioner  
10 contends that Respondent fails to offer any appraisal authority or rationale to support its "so-called  
11 'reconciliation.'" Petitioner also renews its contention that Respondent has not placed proper reliance  
12 on the value indicators and argues that Respondent improperly "effectively averages" the value  
13 indicators instead of addressing its errors by using a "50-50 weighting."

#### 14 Applicable Law

##### 15 Burden of Proof

16 Assessing officers are presumed to have properly performed their duties. (Evid. Code, § 664.)  
17 Therefore, the petitioner has the burden of showing that the assessment is incorrect or illegal. (*ITT*  
18 *World Communications v. Santa Clara* (1980) 101 Cal.App.3d 246; see also Cal. Code Regs., tit. 18, §  
19 5080 subd. (a).)

##### 20 Value Standard

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

##### 28 Reconciliation of Value Indicators

1 Property Tax Rule 3 requires that, in estimating value, the assessor shall consider one or more  
2 of the approaches to value “as may be appropriate for the property being appraised,” which includes the  
3 comparative sales approach, the replacement or reproduction cost approach (e.g., ReplCLD valuation  
4 methodology), or the income approach. The appropriateness of an approach is often related to the type  
5 of property being appraised and the available data. (AH 502, p. 109.) In addition, the validity of a  
6 value indicator will depend upon the accuracy of data and adjustments made to the approach. That is,  
7 the accuracy of a value indicator depends on the amount of available comparable data, the number and  
8 type of adjustments, and the dollar amount of adjustments. Finally, if a large amount of comparable  
9 data is available for a given approach, the appraiser may have more confidence in that approach. For  
10 example, if income, expense, and capitalization rate data can be obtained from many properties  
11 comparable to the subject, the appraiser may attribute significant accuracy to the income approach. The  
12 greatest reliance should be placed on that approach or combination of approaches that best measures the  
13 type of benefits the subject property yields. The final value estimate reflects the relative weight that the  
14 appraiser assigned, either implicitly or explicitly, to each approach. (AH 502, p. 112.)

### 15 **ReplCLD Value Indicator**

16 Property Tax Rule 6, subdivision (a) provides, in part: “The reproduction or replacement cost  
17 approach to value . . . is preferred when neither reliable sales data . . . nor reliable income data are  
18 available . . . .” In general, the ReplCLD valuation methodology is estimated by applying trend  
19 factors—price level changes, including the application of “current prices to the labor and material  
20 components of a substitute property capable of yielding the same services and amenities, with  
21 appropriate additions as specified . . .” (Property Tax Rule 6, subd. (d).) Then, the resulting adjusted  
22 cost amount is “reduced by the amount that such cost is estimated to exceed the current value of the  
23 reproducible property by reason of physical deterioration, misplacement, over- or under-improvement,  
24 and other forms of depreciation or obsolescence. The percentage that the remainder represents of the  
25 reproduction or replacement cost is the property’s percent good.” (Property Tax Rule 6, subd. (e).)

### 26 **Income Approach to Value**

27 Property Tax Rule 8, subdivision (a) states that “the income approach is used in conjunction  
28 with other approaches when the property under appraisal is typically purchased in anticipation of a

1 money income and either has an established income stream or can be attributed a real or hypothetical  
2 income stream by comparison with other properties.” Subdivision (b) describes the income approach to  
3 value as the valuation method whereby, “an appraiser values an income property by computing the  
4 present worth of a future income stream. This present worth depends upon the size, shape, and duration  
5 of the estimated stream and upon the capitalization rate at which future income is discounted to its  
6 present worth.” Subdivision (c) provides that “the amount to be capitalized is the net return which a  
7 reasonably well-informed owner and reasonably well-informed buyers may anticipate on the valuation  
8 date that the taxable property existing on that date will yield under prudent management and subject to  
9 legally enforceable restrictions as such persons may foresee as of that date.”

### 10 Analysis and Disposition

11 Respondent is presumed to have correctly determined the value of the property at issue, and  
12 petitioner bears the burden of proving error. Here, Petitioner argues that Respondent should place 100-  
13 percent reliance on the CEA value indicator and that its revenue and expenses forecasts are based on  
14 the best information available. In the alternative, Petitioner argues that if Respondent must use the  
15 ReplCLD value indicator, it should apply the CEA value indicator to quantify sufficient economic  
16 obsolescence. While Petitioner contends that Respondent incorrectly calculated the CEA value  
17 indicator, Petitioner has failed to quantify or provide documentation supporting its contentions.

18 Property Tax Rule 8 provides that reliance on the income approach is appropriate when the  
19 property has an “established income stream or can be attributed a real or hypothetical income stream by  
20 comparison with other properties.” Petitioner asserts that its revenue and expenses forecasts are based  
21 on the best information available for calculating a CEA value indicator. Respondent, however,  
22 maintains that its equal reliance on the ReplCLD and CEA value indicators is appropriate here and is  
23 based on its thorough analysis of the Petitioner’s financial data and full consideration of the market  
24 conditions and challenges facing the electric generation industry generally.

25 Due to the high degree of unpredictability in the level of Petitioner’s future income, we find that  
26 Petitioner has not shown evidence of an established income stream for its facility sufficient to warrant a  
27 change in the weighting of the value indicators. Accordingly, the Appeals Bureau finds that Petitioner  
28 has failed to meet its burden of proving that Respondent’s determination to place 50-percent reliance on

1 the ReplCLD indicator and 50-percent reliance on the CEA value indicator was in error. We, therefore,  
2 find that Petitioner has not presented sufficient evidence showing that Respondent failed to place proper  
3 reliance on the value indicators in the determination of petitioner's 2017 Board-adopted unitary value.

4 **Issue 4: Whether Petitioner Has Shown That Respondent Improperly Included Petitioner's Land**  
5 **Value in the ReplCLD Value Indicator.**

6 **Findings of Fact and Related Contentions**

7 Petitioner contends that Respondent incorrectly included the value of Petitioner's land parcel  
8 APN 157-230-33 in its 2017 Board-adopted unitary value. Petitioner asserts that this land parcel is non-  
9 unitary property because it is not being used for any activity related to Petitioner's facility. In addition,  
10 Petitioner asserts that this parcel "is affected by uneven/unusable terrain, is affected by more well  
11 activity, and has less paved road exposure, and the comps selected for this property reflect these  
12 conditions." Petitioner further asserts that this land parcel has been double assessed by this Board and  
13 the Kern County Assessor.

14 Petitioner also argues that Respondent "materially over-assessed" its main land parcels APNs  
15 157-230-30 and 157-230-32. Petitioner alleges that "actual fair market value" of these parcels is  
16 \$90,000 based on agricultural use consistent with zoning and discontinuance of their use for power  
17 generation. Petitioner contends that the Board has erroneously added the land value "soft costs" of  
18 \$10,899,200 to the land valuation. (Petitioner also asserts that no land value should be attributed to the  
19 subject for transmission easements because their use is non-economic.

20 Respondent contends that it properly included Petitioner's land parcel APN 157-230-33 in its  
21 2017 Board adopted unitary value. In support of its contention, Respondent notes that Section 19 of  
22 Article XIII of the California Constitution and Revenue and Taxation Code section 721.5 grant the  
23 Board assessment jurisdiction over property owned or used by companies that transmit or sell gas or  
24 electricity. Respondent continues to state that the Board maintains discretion to delegate the  
25 assessment of any parcel, or portion thereof, not used by a state assessee to a county. Respondent  
26 asserts that it has requested Petitioner to provide maps delineating the natural gas pipeline on these  
27 parcels several times, however, since Petitioner has failed to provide the requested information  
28 Respondent argues that it has rightfully assessed the entire parcel and recommends no adjustments.

1           Regarding Petitioner’s double-assessment allegation regarding land parcel APN 157-230-33,  
2 Respondent notes that while the Board notifies the relevant county in writing which parcels will be  
3 state-assessed as of a specific lien date, it is ultimately the county’s responsibility to remove any  
4 duplicate assessment related to property owned and used by a state assessee that is not delegated to the  
5 county by the Board. Respondent states that once Petitioner notified Respondent of a potential double-  
6 assessment, Respondent communicated with Kern County and confirmed that one parcel had been  
7 assessed in duplicate. Respondent asserts that it provided Petitioner with the related documentation and  
8 remains willing to assist Petitioner in remedying the issue, but contends that no adjustment should be  
9 made at this time.

10           Respondent asserts that it properly assessed Petitioner’s land parcels APNs 157-230-30 and  
11 157-230-32. Respondent notes that, in general, assessment methodology and valuation of a particular  
12 land parcel can vary between state and county assessment. Respondent states that the county may have  
13 separately allocated the double-assessed parcel a base year value and “trended it forward” for parcel  
14 APN 157-230-33, while the Board-adopted unitary value reflects the current fair market value of  
15 Petitioner’s parcel as part of the unitary valuation. Respondent argues that Petitioner’s independent  
16 appraisal prepared by Valbridge Property Advisors (Valbridge) dated November 23, 2014 was invalid  
17 because it was nearly three-years-old and utilized “comparables” from the years 2008, through 2012.  
18 Respondent contends that Petitioner has failed to provide any specific evidence that Respondent’s  
19 valuation was done contrary to the standards set forth in Property Tax Rule (Rule) 6. Respondent notes  
20 that subdivisions (b)(2) and (d) of Rule 6 state that the ReplCLD value of property may be estimated by  
21 applying current prices to the property’s labor and material components, with appropriate additions for  
22 costs typically incurred in bringing the property to a finished state. Respondent further notes that these  
23 costs are attributable to land development and are properly included as capitalized and taxable costs  
24 under subdivisions (b)(2) and (d) of Rule 6. Respondent contends that the added land soft cost in this  
25 instance is derived from detailed and confidential cost information specifically related to land from the  
26 total construction costs of similar generation facilities. Respondent asserts that the inclusion of these  
27 soft costs in the land value is only proper for land parcels where Petitioner’s facility is located, and  
28 these costs are directly related to the land and not depreciable as contended by Petitioner.

1 Finally, Respondent argues that Petitioner’s assertion that no land value should be attributed to  
2 the subject for transmission easements because their use is not economic is inconsistent with state  
3 assessment principles. Specifically, Respondent contends that the easements at issue are Petitioner’s  
4 interests in various parcels of land relating to “Rights of Way,” which are owned legal interests in  
5 property and no applicable exclusion for valuation or assessment applies to Petitioner. Respondent  
6 continues to state that Petitioner’s argument that these easements are non-economic does not negate the  
7 fact that these easements are ownership interests in land and properly assessed to Petitioner.  
8 Accordingly, Respondent does not recommend any adjustments to Petitioner’s 2017 Board-adopted  
9 unitary value with respect to the transmission easements.

10 In its reply, Petitioner continues to challenge the value of land parcel APN 157-230-33, and  
11 alleges Respondent has “grossly overstated” its value. Petitioner contends that the 2014 Valbridge  
12 independent appraisal is valid and Respondent should consider it in its valuation of this land parcel.  
13 Petitioner further contends that Respondent’s comparable properties are not comparable to the land  
14 parcel at issue.

15 Prior to the appeals conference, Petitioner provided Respondent with an updated Valbridge  
16 appraisal related to land parcel APN 157-230-33 on October 16, 2017. After reviewing the 2017  
17 Valbridge appraisal, Respondent has determined that the appraisal reasonably reflects the fair market  
18 value of the land parcel at issue. Respondent has, therefore, adjusted the value of this land parcel by  
19 \$4,470,653 to \$217,749. The reduction results in a decrease of \$4,470,653 to the RepICLD value  
20 indicator and a decrease of \$1,213,507 to the CEA value indicator. Accordingly, Respondent  
21 recommends that the 2017 Board-adopted unitary value be reduced by \$2,900,000 from \$62,600,000 to  
22 \$59,700,000.

### 23 Applicable Law

#### 24 Burden of Proof

25 Assessing officers are presumed to have properly performed their duties. (Evid. Code, § 664.)  
26 Therefore, the petitioner has the burden of showing that the assessment is incorrect or illegal. (*ITT*  
27 *World Communications v. Santa Clara* (1980) 101 Cal.App.3d 246; see also Cal. Code Regs., tit. 18, §  
28 5080 subd. (a).)

1 **ReplCLD Value Indicator**

2 Property Tax Rule 6, subdivision (a) provides, in part: “The reproduction or replacement cost  
3 approach to value . . . is preferred when neither reliable sales data . . . nor reliable income data are  
4 available . . .” In general, the ReplCLD valuation methodology is estimated by applying trend  
5 factors—price level changes, including the application of “current prices to the labor and material  
6 components of a substitute property capable of yielding the same services and amenities, with  
7 appropriate additions as specified . . .” (Property Tax Rule 6, subd. (d).) Then, the resulting adjusted  
8 cost amount is “reduced by the amount that such cost is estimated to exceed the current value of the  
9 reproducible property by reason of physical deterioration, misplacement, over- or under-improvement,  
10 and other forms of depreciation or obsolescence. The percentage that the remainder represents of the  
11 reproduction or replacement cost is the property’s percent good.” (Property Tax Rule 6, subd. (e).)

12 **Income Approach to Value**

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

24 **Analysis and Disposition**

25 Respondent is presumed to have determined correctly the value of the property at issue, and  
26 petitioner bears the burden of proving error. Here, Petitioner has submitted a 2017 Valbridge appraisal  
27 for land parcel APN 157-230-33, and Respondent has determined that the appraisal reasonably reflects  
28 the fair market value of this land parcel. Respondent now recommends that the 2017 Board-adopted



