CALIFORNIA STATE BOARD OF EQUALIZATION

SUMMARY DECISION UNDER REVENUE AND TAXATION CODE SECTION 40

In the Matter of the Petition for Reassessment of the 2024 Unitary Value for: **SOUTHERN CALIFORNIA EDISON COMPANY (0148)** Petitioner	Appeal No.: SAU 24-003 Oral Hearing Date: December 17, 2024[1]

Representing the Parties:

For the Petitioners: Mardiros H. Dakessian, Attorney
Dakessian Law, LTD.

Charles Moll, Attorney
McDermott Will & Emery

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

David Lujan, Attorney
Attorney for State-Assessed Properties Division

Jack McCool, Chief
State-Assessed Properties Division

Appeals Attorney: Sarah J. Wilkman, Attorney III

VALUES AT ISSUE

	Value	Penalty	Total
2024 Board-Adopted Unitary Value	$38,986,400,000	$0	$38,986,400,000
Petitioner's Requested Unitary Value	$32,915,600,000	$0	$32,915,600,000
Respondent's Appeal Recommendation	$38,986,400,000	$0	$38,986,400,000
Board Determined Value	$38,986,400,000	$0	$38,986,400,000

[1] At the oral hearing, the Board denied the petition as to all issues, by a 4-1 vote of the Members, with Chair Lieber, Member Vazquez, and Member Schaefer and Controller Cohen voting aye, and Vice-Chair Gaines voting no.

Factual Background

Southern California Edison Company (SCE or Petitioner), a wholly-owned subsidiary of Edison International, is a public utility subject to rate regulation by the California Public Utilities Commission (Commission or CPUC). SCE is primarily engaged in the business of supplying electric energy in central, coastal, and southern California, excluding the City of Los Angeles and certain other cities. Petitioner's service area encompasses 50,000 square miles, which includes 103,000 miles of distribution and transmission lines, serving a population of approximately 15 million people.

The CPUC establishes rates for utilities under its jurisdiction in a rate-setting procedure called the General Rate Case (GRC).[2] In establishing rates for utilities, the CPUC considers the utilities' rate base. Rate base is the value of property on which a public utility is permitted by the Commission to earn a specified rate of return. In general, the rate base consists of the cost of property as used by the utility in providing service.

Petitioner's 2024 Board-adopted value of $38,986,400,000 is based on 75 percent reliance on the Historical Cost Less Book Depreciation (HCLD)[3] value indicator ($41,046,987,454) and 25 percent reliance on the Capitalized Earning Ability[4] (CEA) value indicator ($32,804,550,405).

On appeal, Petitioner contended that their 2024 Board-adopted unitary value is overstated and instead requested a unitary value of $32,915,600,000. The parties met for an Appeals Conference but did not reach agreement on any of the issues raised. On December 17, 2024, the parties engaged in an oral hearing before the Board.

General Contentions Raised by the Parties

Petitioner and the State-Assessed Properties Division (SAPD or Respondent) each discussed information relevant to the context of the five specific issues raised within their briefings and at the

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[2] The Commission's Rules of Practice and Procedure Article 2 and Appendix A of the Commission decision (D07-07-004) set the rules and procedures for GRC review process.

[3] The HCLD value indicator is a form of the cost approach to value. The Historical Cost Less Depreciation (HCLD) value indicator derivation includes the historical or original acquisition cost of all property less nontaxable items and property assessed elsewhere. This results in the taxable historical cost. The taxable historical cost is then reduced for the assessee's regulatory accounting depreciation of the taxable property. This results in the assessable HCLD. The value of any possessory interest and/or noncapitalized leased properties are added to arrive at the final HCLD value indicator. HCLD is one of the more important indicators of value for closely regulated public utilities. See Cal. Bd. Of Equaliz. *Unitary Valuation Methods (UVM)* (2003), pp. 1-4.

[4] The CEA value indicator is a form of the income approach to value. The income approach to value may be generally described as any method that converts future anticipated income into present value. The conversion process is commonly known as income capitalization. See Cal. Bd. Of Equaliz. *UVM*, (2003), pp. 35-37.

oral hearing; this included information related to SCE's past, current, and future financial and economic situation, the risks associated with wildfires, the context of the Board's valuation, and the state of the regulated electric generation industry as a whole. The specific issues Petitioner raised with its 2024 Board-Adopted value are addressed subsequently under Legal Issues 1 through 5, while a summary, analysis, and disposition of the general contentions is provided first to establish the context of the Board's disposition of this petition.

Each party provided remarks on the overall reasonableness of SCE's 2024 Board-adopted unitary value. Petitioner contends that the mere magnitude of the $8 billion discrepancy between the HCLD and CEA value indicators is unacceptable from an appraisal standpoint, which in short, allegedly supports their general claim that SAPD's appraisal is unlawful and improper. However, Respondent notes that Petitioner had $2.7 billion of asset additions this year.[5]

Additionally, Petitioner raises four general concerns, asserting these are the various business risks and other factors affecting SCE's 2024 unitary value: 1) the context of increasing catastrophic wildfires in California; 2) California's use of "inverse condemnation[6]," its impact on Investor-Owned utilities, and the uncertainty as to whether the CPUC will allow liability to be recovered in the rate base even if the utility acts prudently[7]; 3) the challenges and cost prohibitive nature of obtaining insurance coverage due to wildfire risk arising from its ordinary operations, as well as recent impacts to the California homeowner's insurance market; 4) Wildfire Mitigation Plans and the Wildfire Insurance Fund, including specifically California's Senate Bill (SB) 901[8] (Ch. 626, Stats. 2018) and the Wildfire Insurance Fund created by Assembly Bill (AB) 1054[9] (Ch. 79, Stats 2019), which

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[5] Respondent notes the approximately $2.7 billion in additions is exclusive of both retirements and construction work in progress (CWIP).

[6] Inverse condemnation is a legal concept that entitles property owners to just compensation if their property is damaged by a public use. This liability rule applies to all government agencies, as well as utilities. After a wildfire, inverse condemnation is the way that victims of fires (residents, businesses, and local agencies) recover their costs. See League of California Cities "Inverse Condemnation Fact Sheet" https://www.counties.org/post/inverse-condemnation-fact-sheet.

[7] Petitioner cites 2017 CPUC ruling for San Diego Gas & Electric company (SDG&E), which held SDG&E liable for damages due to finding SDG&E had not taken reasonable actions prior to 2007 and thus not properly invoked inverse condemnation to allow cost sharing through utility rates. (CPUC, App. No. 15-09-010 and Decision 17-11-033.).

[8] SB 901 established, among other provisions, CPUC's reasonableness review of utility activities to determine whether, or not, cost recovery through the rate base is allowable when the wildfire is caused by the utility's equipment, without altering California's application of inverse condemnation.

[9] Assembly Bill 1054 (Ch. 79, Stats. 2019) (AB 1054) created a $21 billion fund funded by contributions from investor-owned utilities, including Petitioner, and from ratepayers. This fund is available to pay certain wildfire claims made against Petitioner and other fund participants.

statutorily required Petitioner to make an initial contribution of $2.4 billion, and 10 annual contributions of $95 million each, and Petitioner's statutory requirement to maintain reasonable insurance coverage, which must be exhausted prior to Wildfire Insurance Fund reimbursement becoming available to Petitioner.[10]

However, Respondent notes that the broad risks Petitioner cited do not acknowledge the adjustments already within Petitioner's 2024 Board-adopted unitary value, which total approximately $2.7 billion. Respondent highlights four specific adjustments which have already been included in SCE's 2024 Board-adopted value:

- AB 1054 requires SCE to pay an additional $95 million per year for 5 additional years into the wildfire fund. Staff has made an adjustment to account for this requirement which resulted in an approximately $112 million value reduction.

- SCE has requested a .85% wildfire risk premium be added to its capitalization rate. Staff has made an adjustment to account for this request, which resulted in an approximately $465 million value reduction.

- AB 1054 requires SCE to make $1.6 billion in capital expenditures over a three year period for fire risk mitigation purposes. The assembly bill precludes SCE from earning an equity return on these capital expenditures. As of the 2024 lien date, SCE has made all $1.6 billion in capital expenditures for this purpose. Staff has made an adjustment to account for SCE's inability to earn an equity return on these expenditures, which resulted in an approximately $524 million value reduction.

- Staff made an obsolescence adjustment to the HCLD indicator to acknowledge additional obsolescence resulting from the .85% equity risk premium addition to the capitalization rate. This adjustment resulted in an approximately $1.6 billion value reduction.

Then, Respondent contends, these, among other arguments regarding a general increase in business risk due to wildfires, are the same arguments Petitioner made—and the Board rejected—for the last four years.[11] Further, Respondent notes these are also the same arguments the CPUC rejected

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[10] Petitioner also notes that maintaining $1 billion of insurance coverage has become increasingly expensive, citing $450 million in costs for FY 2022-2023, and estimates that cost increasing, which questions their ability to obtain a reasonable amount of wildfire insurance.

[11] California State Board of Equalization, Appeal SAU 20-015, decided December 16, 2020, Appeal SAU 21-007, decided December 14, 2021, SAU 22-006, decided December 13, 2022, and SAU 23-010, decided December 12, 2023. We note that each of these four prior petition years is being contested by Petitioner in superior court. However, the instant petition was decided separately based on the submitted 2024 petition record.

in SCE's request for a wildfire risk premium adjustment to increase the return on equity[12] (ROE) allowed in 2019. (See CPUC Decision 19-12-056 (Dec. 19, 2019), pp. 40-41.) In the CPUC case,[13] the CPUC stated:

> After considering the evidence on market conditions, trends, creditworthiness, interest rate forecasts, quantitative financial models, additional risk factors including business risk [which includes wildfire risk], and interest coverage presented by the parties and applying our informed judgment ... We find that SCE's authorized test year 2020 ROE should be 10.30%. This ROE is reasonably sufficient to assure confidence in the financial soundness of the utility and to maintain investment grade credit ratings while balancing the interests between shareholders and ratepayers.

(Ibid.) Further, Respondent notes that CPUC's final conclusion was that "We find that the passage of AB 1054 and other investor supportive policies in California have mitigated wildfire exposure faced by California's utilities." (*Id.,* at p. 37.) The CPUC also stated, "[b]ased on the above financial, business, and regulatory risks discussion, we conclude the ROE ranges adopted in the proceedings…adequately compensate the utilities for these risks." (*Id.,* at p. 40.) Respondent notes that Petitioner also recognized its significant reduction of risk of liability, as Petitioner voluntarily significantly reduced its ROE increase request in the CPUC case following the passage of AB 1054 from 6 percent to .85 percent, which was also ultimately rejected by the CPUC. (*Id.,* at p. 28.)

In addition, Respondent also notes that while the risk of catastrophic wildfires by Petitioner's business remains, the CPUC, the credit markets, and Petitioner itself all recognize that risk has been significantly reduced. Respondent points to Petitioner's own press release recognizing a significant reduction to its risks, stating, "[it] has reduced the probability of catastrophic wildfires associated with its equipment by about 75%-80% since 2018".[14] Further, Respondent notes that Fitch Ratings, one of

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[12] A utility's Rate of Return, or Cost of Capital, is the weighted average cost of debt, preferred equity, and common stock, a utility has issued to finance its investments. Return on Equity (ROE) is the return to common equity. The CPUC attempts to set the authorized ROE at a level that is adequate to enable the utility to attract investors to finance the replacement and expansion of its facilities so it can fulfill its public utility service obligation. In practice, this level is determined by estimating market returns on investments for other companies with similar levels of risk. In general, a higher ROE allows greater earnings and would be appropriate to reflect increased risks and uncertainties. See generally: <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-costs/cost-of-capital> and <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-costs/historical-electric-cost-data/rate-of-return> [As of Dec. 2, 2024.]

[13] California Public Utilities Commission Decision 19-12-056 (D1912056) (Dec. 19, 2019), p. 28 available at <https://docs.cpuc.ca.gov/DecisionsSearchForm.aspx> [as of Nov. 28, 2024].

[14] Edison International, Southern California Edison Improves Grid Safety, Significantly Reduces Wildfire Threat (March 27, 2023) <Southern California Edison Improves Grid Safety, Significantly Reduces Wildfire Threat | Edison International | Newsroom> (as of October 2, 2024.) Further details are set forth in Petitioner's 2023-2025 Wildfire Mitigation Plan

the three major credit rating agencies, upgraded Petitioner's long-term issuer credit ratings from 'BBB-'/Outlook Positive to 'BBB'/Outlook Stable.[15] Respondent notes this opinion was reviewed and reconfirmed by Fitch on December 18, 2023.[16] Additionally, in 2022, the CPUC affirmed its 2019 decision that "AB 1054 has substantially mitigated wildfire liability as well as liquidity concerns" and lowered Petitioner's ROE by .25 percent percent even though Petitioner had again asked for an increase, in part, due to wildfire risk. (California Public Utilities Commission Decision 22-12-031 (Dec. 15, 2022), p. 48.)

In addition, Respondent notes that similar to the previous year, SAPD has again allowed an increased equity risk premium of .85 percent to Petitioner's 2024 overall capitalization rate. This equity risk premium resulted in an approximately $2 billion value reduction, which was allowed to acknowledge risk that might not be captured in Petitioner's other adjustments.

Respondent also maintains that any increase to ordinary insurance cost is already accounted for in its appraisal.

Petitioner contends that SAPD's claims of multiple and generous adjustments misrepresent the adjustments to date and that the Board should not conflate the wildfire risk premium adjustment discussion with the specific issues raised in SCE's petition (discussed *infra*). Petitioner further argues that Respondent incorrectly negated the mentioned adjustment to account for SCE's inability to earn an equity return on the wildfire mitigation capital expenditures, by erroneously increasing the cost indicator through an AB 1054 securitization cost addback, which resulted in a net increase of $524 million in assessed value. Additionally, Petitioner notes that while its credit rating has increased, BBB is still within the lowest tier of investment grade.

Applicable Law and Appraisal Principles

Burden of Proof

Assessing officers are presumed to have properly performed their duties. (Evid. Code, § 664.) Therefore, Petitioner has the burden of showing that the assessment is incorrect or illegal. (*ITT World*

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available at <https://www.sce.com/sites/default/files/AEM/Wildfire%20Mitigation%20Plan/2023-2025/2023-03-27_SCE_2023_WMP_R0.pdf> (as of Dec. 2, 2024.)

[15] Fitch Ratings, Fitch Upgrades Edison International's & So. Cal. Ed's IDRs to 'BBB'; Outlook Stable (April 28, 2023) <Fitch Upgrades Edison International's & So. Cal. Ed's IDRs to 'BBB'; Outlook Stable (fitchratings.com)> (as of December 2, 2024.)

[16] https://www.fitchratings.com/entity/southern-california-edison-company-80088928 (As of December 2, 2024.)

Communications v. Santa Clara (1980) 101 Cal.App.3d 246; see also Cal. Code Regs., tit. 18, § 5541, subd. (a).)

Analysis and Disposition of General Contentions

Respondent is presumed to have correctly determined the value of the property at issue, and petitioner bears the burden of proving otherwise. Here, Petitioner contends that the mere magnitude of the $8 billion discrepancy between the HCLD and CEA value indicators is unacceptable from an appraisal standpoint, which proves that economic conditions, risk, and other uncertainties were not fully considered by the Respondent and supports their claim that SAPD's appraisal is unlawful and improper. Additionally, Petitioner generally asserts that Respondent did not consider, or fully consider, the economic conditions and risk Petitioner faces as a part of its 2024 assessment. However, Respondent confirms it has considered many factors in its assessment, including those Petitioner mentions, and also highlights certain adjustment within SCE's 2024 valuation that reflect the consideration of risk, including the allowance of a 0.85 percent wildfire risk premium added to the capitalization rate. Further, Respondent points out that Petitioner's 2023 calendar year asset additions are approximately $2.7 billion, exclusive of retirements and construction work in progress. Additionally, Respondent raises Petitioner's prior CPUC proceeding as additional evidence that such risk was viewed as adequately captured in the rate base; however, we note that while such a finding has relevance to the determination of the rate base utilized by Respondent in the development of the HCLD value indicator, Petitioner's specific factual contentions and legal issues have been fully considered by this Board, herein, as a case of first impression.

While these general risks and factors are relevant to the context of this appeal, we find that no general concern raised proves that Respondent erred in the calculation of SCE's 2024 Board-adopted unitary value. Further, we also find that, to the extent that Petitioner is using these general risks and factors to assert specific errors exist within the 2024 Board-adopted unitary value, Petitioner maintains the burden of proof regarding the specific legal issues raised herein.

Legal Issues 1 and 2: Whether Petitioner Has Shown that Respondent Failed to Reconcile the Historical Cost Less Depreciation (HCLD) Value Indicator and the Capitalized Earning Ability

(CEA) Indicator of Value and/or Otherwise Erred in Placing 75 Percent Reliance on the HCLD Value Indicator and 25 Percent Reliance on the CEA Indicator of Value.

<u>**Findings of Fact and Related Contentions**</u>

Based on the contentions described below, Petitioner requests that the Board revise its 2024 unitary value by instead placing 25 percent reliance on the HCLD value indicator and 75 percent reliance on the CEA value indicator rather than utilizing Respondent's reconciliation of the two value indicators.

First, Petitioner asserts Respondent's appraisal is flawed as the two value approaches utilized produced widely varying results. Petitioner alleges that due to this disparity, and as Respondent's analysis does not explicitly state the value approaches were reconciled, Respondent must have decided to simply weigh the HCLD value indicator as 75 percent and the CEA value indicator 25 percent, without any reconciliation or reason for doing, which, in Petitioner's opinion, is contrary to the guidance within Assessors' Handbook (AH), section 501, *Basic Appraisal* (AH 501). Petitioner also asserts that the disparity in value indicators signals the existence of substantial obsolescence or impairment, as AH 502, *Advanced Appraisal*, warns is possible.

Second, Petitioner asserts Respondent has improperly weighted the HCLD value indicator as 75 percent and the CEA approach at 25 percent. Petitioner asserts that Respondent has arbitrarily and improperly weighted the value indicators, which is underscored by Respondent's admission that it is the same reliance used to value Petitioner's property in each of the past 10 years, despite recent changes in circumstances and increasing risks and costs related to the ownership of Petitioner's property. Petitioner instead requests that the Board instead weigh the two value indicators as 75 percent income approach and 25 percent cost approach.

Petitioner further asserts that Property Tax Rule[17] 8 indicates the income approach must be granted additional weight. Petitioner asserts that the rate base is intended to achieve a fair balance between what ratepayers bear and what utility shareholders earn, and not to establish the fair market value of the utility's property. Petitioner further argues that the HCLD indicator calculated by SAPD is unreliable when Respondent includes assets not included in the rate base and does not recognize

[17] All references to "Property Tax Rule" or "Rule(s)" are to sections of title 18 of the California Code of Regulations.

impairments due to regulatory restrictions placed on certain assets (i.e., the inability to earn a return), and as such, additional reliance placed on the income indicator captures economic impairment due to wildfire risks and increased regulatory restrictions. Petitioner notes that the Ernst & Young, LLP (EY) report it commissioned in the SAU 20-015 appeal for lien date 2020, supports its view and reconciles the two approaches appropriately, in its opinion.

Petitioner further contends that Respondent acknowledges a limited understanding of "regulatory lag"[18] but continues to argue that the CEA indicator should be given less reliance in Petitioner's overall value, which Petitioner views as contrary to Rule 8.

Petitioner asserts the changes that have taken place during the last 10 years in terms of wildfires and shifts in the business environment and regulatory restrictions, coupled with Respondent's failure to reconcile the $8 billion difference in the HCLD and CEA approaches have rendered Respondent's appraisal completely disconnected from what a willing buyer would pay.

Petitioner asserts that its argument that the difference between the two value indicators is attributable to obsolescence is supported by AH 502, *Advanced Appraisal*, which states a "CEA indicator which is much lower than HCLD may indicate that obsolescence exists in the property." Additionally, Petitioner reasserts that Respondent has not reconciled the indicators in an analytical manner and is distracting from that failure by requesting Petitioner "provide a reconciliation of value indicators in an analytical manner" based on "reasoned and defensible opinion of verified market data" Petitioner concludes by reasserting SAPD's duty is to reconcile the indicators, and the difference between the two approaches suggests Respondent has not addressed all economic and functional obsolescence.

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

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

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

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

> The final value estimate is an appraiser's *opinion of value*. There is no mathematical formula or statistical technique to which the appraiser can ultimately refer in order to reach the final value estimate. It is an opinion that should be based on the appraiser's application of generally accepted appraisal methods and procedures. It is generally inappropriate to use the arithmetic mean of the value indicators as the final value estimate. Simply calculating an average implies that all the value indicators have equal validity. While this may occur in certain instances, it is usually not the case. Appraisers must follow Rule 3, noted above, and consider the appropriateness of the value approaches, the relative accuracy of the value indicators, and the quantity and quality of the data available when reconciling value indicators to reach the final value estimate.

(AH 502, p. 111; Emphasis added.)

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

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

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

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

(*UVM,* p. 1. Emphasis added.)

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

Respondent states that consistent with the relevant HCLD and CEA value indicator authorities and considerations, and Petitioner being a utility, rate regulated by the CPUC, Respondent considered HCLD to be the most reliable indicator of value, placing 75 percent reliance on the indicator. Respondent notes that due to Petitioner's significant growth in actual and planned capital expenditures to replace and expand distribution and transmission infrastructure, and to construct and replace generation assets, Petitioner is experiencing "regulatory lag." Accordingly, in Respondent's opinion, it is appropriate to weight the CEA value indicator 25 percent to account for regulatory lag in rate adjustment for items on which Petitioner is not currently earning a return.

Respondent also notes the 75/25 percent reliance on HCLD and CEA respectively is the same reliance used by SAPD to value Petitioner's property in each of the past 13 years, as well as the same reliance Respondent places on the value indicators of other investor-owned, rate-regulated utilities. Respondent contends, while Petitioner sees this consistency as a flaw or indication that changes have not been reflected related to the climate, utility industry, and to Petitioner specifically, Respondent asserts Petitioner ignores the fact that a change in weighting is not the sole method by which significant value adjustments can be made to reflect such factors, such as the approximately $2.7 billion downward adjustment Respondent has already made to account for wildfire risk.

Respondent also notes that Petitioner's assertion that the difference between the HCLD and CEA methods is entirely attributable to economic obsolescence is wholly unsubstantiated. Further, Respondent notes it is unclear how Petitioner arrived at its requested weighting of the CEA and HCLD indicators. Respondent points out that in 2020, Petitioner requested 50 percent weighting of the CEA value indicator in its original petition. Then in 2021, Petitioner requested a 35 percent weighting of the CEA value indicator based on the same arguments, with no explanation for the change. Now, in 2024, Petitioner requests a 75 percent weighting of the CEA value indicator based on the same arguments and presumptive risk analysis developed in 2020, without explanation for the change. Respondent concludes while Petitioner criticizes SAPD's reasoning, Petitioner has not provided a basis for the reconciliation of the value indicators it requests in this petition in an "analytical manner" that is based on a "reasoned and defensible opinion of verified market data". (AH 502, p. 62.)

Applicable Law and Appraisal Principles

Burden of Proof

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

Value Standard

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

HCLD Approach to Value

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

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

(UVM (2003), p. 1.) Further, Board guidance states,

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

(UVM, p. 1.)

Depreciation and the Cost Approach

In general, the cost approach recognizes three types of depreciation: physical deterioration, functional obsolescence, and external, or economic, obsolescence, through the application of the Board's replacement cost new trend factors and "percent" good factors. Obsolescence may occur when property is outmoded (functional obsolescence) or when some event has substantially diminished the future earning power of the property (economic obsolescence). (See Assessors' Handbook section 501, *Basic Appraisal* (January 2002), pp. 80-83.) Functional obsolescence is the loss of value in a property caused by the property's loss of capacity to perform the function for which it was intended. (*Id*. at p. 81.) Economic obsolescence is the diminished utility of a property due to adverse factors external to the property being appraised and is incurable by the property owner. (*Id*. at p. 82.) The existence of any additional or extraordinary obsolescence must be supported with verifiable documentation and evidence, consistent with Board Guidelines. (See Property Tax Rule 6, subds. (d) & (e); Assessors' Handbook section 502, *Advanced Appraisal* (Reprinted January 2015) (AH 502), pp. 20-21; *Unitary Valuation Methods*, (2003), p. 30; and Cal. Bd. of Equalization, *Guidelines for Substantiating Additional Obsolescence*, at p. 1.)

Income Approach to Value

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

Reconciliation of Value Indicators

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

Analysis and Disposition

Respondent is presumed to have correctly determined the value of the property at issue, and Petitioner bears the burden of proving otherwise. Here, Petitioner contends that because Respondent's calculated HCLD value indicator exceeds the CEA value indicator by approximately $8 billion, Respondent's 2024 Board-adopted unitary value is flawed, as the various approaches to value must yield approximately the same results. Further, Petitioner asserts differences of such a magnitude indicate that the value indicators were not reconciled, as required by Property Tax Rule 3 and Board Guidance, but instead Respondent "simply states that the final value estimate is an appraiser's opinion of value." However, as Board guidance and Respondent note, significant differences may occur in validly calculated indicators. (AH 501, p. 62.) Additionally, Petitioner asserts that the difference in the two valuation approaches must be due to additional, uncaptured economic or functional obsolescence but submits no additional evidence to substantiate this claim. However, Respondent has conducted its appraisal by calculating and reconciling the HCLD and CEA value indicators, consistent with relevant law and appraisal guidance. [19] Respondent notes significant differences in the two value approaches can and may occur, as stated in Assessors' Handbook, section 501 (AH 501) *Basic Appraisal,* without compromising the validity of the underlying value approaches. Respondent maintains that in light of all available evidence, it was reasonable and appropriate to place 75 percent reliance on the HCLD value indicator, as the HCLD value indicator is a reliable indicator of value for closely regulated public utilities and the reliance upon which reflects the consideration of many factors, including: Petitioner's "regulatory lag," Petitioner's established income stream, the relative reliance placed on the value indicators of other rate-base regulated utilities, and consistency with Property Tax Rules 3, 6, and 8, as well as relevant Board guidance.

Based on the evidence and arguments submitted, we find that Petitioner has not provided specific evidence or argument to prove that its HCLD indicator is overstated, nor has Petitioner shown that its CEA value indicator should be granted additional reliance. Further, Petitioner has not shown that Respondent failed to reconcile the two valuation approaches. Finally, we note Petitioner's claim that the difference in the HCLD and CEA value indicators is due to additional, uncaptured obsolescence is unsupported in the evidentiary record. For the foregoing reasons, we find that Petitioner has not met their burden of proof as to these two issues.

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

<u>Legal Issue 3:</u> Whether Petitioner Has Shown that Respondent Must Adjust the Board-Adopted Value for SCE's Accrual for Liabilities for the 2017/2018 Wildfires and Mudslides.

<u>Findings of Fact and Related Contentions</u>

Petitioner asserts their 2024 Board-adopted value does not account for SCE's accrual for liabilities for the 2017/2018 wildfires and mudslides, erroneously disregarding costs for estimated claims and settlements pre-AB 1054, just as Respondent has done previously in its 2019 through 2023 assessments. Petitioner argues that Respondent must make adjustments to reflect the expected losses and settlement payments in SCE's unitary assessments, as valuation of a going concern would require consideration of forecasted future expenses because a potential buyer would become responsible for those liabilities and factor those obligations into the purchase price. On this basis, Petitioner requests an adjustment of $689 million from both the HCLD and CEA values to account for these operating expenses above and beyond insurance recoveries.

Petitioner asserts that Respondent ignores Petitioner's wildfire-related expenses as past expenses that are not anticipated to be incurred again in the future. Petitioner refutes this treatment by stating that its request for an adjustment of $689 million represents quantifiable operating expenses which negatively impact the going concern value of its property, rather than a contractual or financing liability. Petitioner contends such expenses are ordinary and necessary parts of SCE's operation as a going concern, and even if they were not ordinary in the "new normal" of year-round wildfires in California, Respondent does not provide citation to support excluding a non-ordinary expense that is anticipated in the future.[20] Petitioner further asserts that Rule 8 and AH 502 require the inclusion of anticipated income and operating expenses, and that Respondent cites no authority to exclude a non-ordinary expense that is anticipated in the future.

Petitioner does not dispute that the liabilities at issue stem from 2017 and 2018 events but asserts that SAPD is wrong that these claims and settlements will neither continue to increase, nor be paid in the foreseeable future. Between December 31, 2022, and December 31, 2023, SCE claims to

[20] In support, Petitioner cites a general statement from AH 502 to support this position. AH 502, p. 67 states, "Cost trends relating to the components of operating expenses should be studied to estimate the future level of operating expenses." Petitioner asserts such costs are anticipated to continue in the future, but does not address the likelihood of such claims in the context of AB 1054, which is designed to reduce the likelihood of such expenses if and until the wildfire mitigation fund is exhausted.

have accrued additional losses of $630 million additional losses related to these events, bringing its total to $8.7 billion in settlements and $689 million remaining to be paid as of December 31, 2023. Additionally, Petitioner notes that AB 1054's remedies do not address the losses and settlements related to the 2017 and 2018 Wildfire/Mudslide events, as it only covers wildfires occurring on or after July 2019. Petitioner concludes by reasserting that while the initial liability stems from past events, that fact does not change the ongoing expenses to SCE, and that such expenses would be considered by any willing buyer.

Respondent argues that it is unclear why these liabilities, which arguably reduce the value of Petitioner's *business* as a going concern, necessarily result in a reduction to the value of its *property* as a going concern or its taxable unitary value, nor why Petitioner equates the valuation of its *property* as a going concern with the value of its *business* as a going concern, as none of the authorities Petitioner cites supports that proposition.

Respondent notes that consistent with the California Constitution Article XIII, section 1, the standard of value is fair market value. Further, for state-assessed properties, the California Supreme Court has stated:

> From our review of the relevant constitutional and statutory provisions, we conclude that unit taxation is properly characterized not as the taxation of real property or personal property or even a combination of both, but rather as the taxation of *property as a going concern.* First, what the Board assesses is the value of the public utility *property* as a going concern; it considers the earnings of the *property* as a whole, and does not consider, less still assess, the value of any single real or personal asset.

(*ITT,* (1985) 37 Cal.3d at 864-865, emphases added by Respondent.) Respondent notes this is explained for purposes of California property tax purposes by AH 502 as follows:

> "Going concern value" is a term that has been used in a variety of contexts, and more than one definition of the term can be found in the appraisal literature. Also, there are different meanings for California property tax purposes and more than one meaning even within California property tax law.
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> ¶ ... ¶
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> Outside the property tax arena, going concern appraisals are commonly conducted for hotels and motels, restaurants, bowling alleys, industrial enterprises, shopping centers, retail stores, and similar business operations using real property. Generally, the real property is considered an integral part of the business operation. Without an allocation among the various elements contributing value to the business operation, however, *such an appraisal is not appropriate for California property tax purposes*....

> Where the unit principle of valuation is used, it has been said that the assessable property is valued as a going concern. *This means only that the taxable property of the business should be valued as if put to beneficial or productive use. <u>It does not mean that the entire value of the business can be assessed or that the going concern value is assessable</u>*.

(AH 502, p. 157, emphases added by Respondent.) Accordingly, Respondent notes their appraised value reflects the total market value of all taxable *property* as a unit owned or used by Petitioner, not the "firm value," which can be thought of as an estimate of the price a potential buyer might be willing to pay for the entire *business*. Respondent contends the entire business or firm value, by itself, is not relevant to California unitary property taxation.

Respondent also remarks that this context is why the CPUC's consideration of liabilities in evaluating a proposed acquisition is irrelevant, because CPUC is instead evaluating the *entire business*.

Respondent goes on to note that Petitioner's equating of "firm value" with the value of the entire company, requiring a decline in the unitary value of taxable property when firm value declines, is reasoning that ignores the fundamental difference between the value of "*the entire company*" and the unitary value of "*the company's taxable property*." Instead, because Petitioner's "Wildfire-related claims" are for the settlement or potential settlements of litigation arising out of wildfires and mudslides that occurred in 2017 and 2018, Respondent notes it does not reduce the value of Petitioner's taxable property, making a downward adjustment inappropriate.

Additionally, Respondent contends Petitioner's request for the same deduction from the CEA value indicator is also not appropriate for the same reasons. Respondent notes the premise of the CEA calculation is to convert (or capitalize) a *future* income stream into present worth (Rule 8, subd. (a).), and the amount to be capitalized is:

> the net return which a reasonably well informed owner and reasonably well informed buyers may *anticipate* on the valuation date that the taxable property existing on that date will yield under prudent management and subject to such legally enforceable restrictions as such persons may foresee as of that date.

(Rule 8, subd. (c), emphasis added.) Thus, Respondent contends it is clear that neither past nor non-ordinary expenses may be deducted from a future income stream to be capitalized. Accordingly, as Respondent notes the costs for which Petitioner seeks a reduction are past expenses and, regardless of whether other wildfire or mudslide liabilities will ordinarily incur again in the future, it is undisputed that the particular liabilities at issue have been accrued from the 2017 and 2018 wildfires and mudslides, all of which occurred in the past and will not recur.

Finally, Respondent notes that while Petitioner appears to be arguing that since these past liabilities will actually be paid at some time in the future, they are deductible when calculating the CEA value indicator; however, Respondent notes the mere fact that they may be paid in the future does not mean that such expenses qualify as deductible, ordinary operating expenses. Respondent also notes that to the extent Petitioner is arguing that this type of wildfire liability lawsuit settlements will occur in the future, Petitioner has stated a belief that much of that risk has been mitigated.

Applicable Law and Appraisal Principles

Burden of Proof

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

Value Standard

See Issues 1 and 2, Applicable Law, p. 12.

HCLD Approach to Value

See Issues 1 and 2, Applicable Law, pp. 12-13.

Income Approach to Value

See Issues 1 and 2, Applicable Law, pp. 13-14.

Subdivision (c) provides that "the amount to be capitalized is the net return which a reasonably well-informed owner and reasonably well informed buyers may anticipate on the valuation date that the taxable property existing on that date will yield under prudent management and subject to legally enforceable restrictions as such persons may foresee as of that date." Net return is the difference between gross return and gross outgo. (Rule 8, subd. (c).) Amortization, depreciation, and debt retirement are explicitly excluded from gross outgo. (*Ibid*.)

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Analysis and Disposition

Respondent is presumed to have correctly determined the value of the property at issue, and Petitioner bears the burden of proving otherwise. Petitioner contends that Respondent's calculated unitary value inappropriately excludes Petitioner's $689 million in liabilities related to the 2017 and 2018 wildfires and mudslides and requests a corresponding reduction to each value indicator. Petitioner asserts such an adjustment is necessary as the liabilities reduce its firm value, or going concern as a business, and certainly would be considered by any prospective buyer or the CPUC in any proposed transaction. Further, Petitioner contends such an adjustment to the CEA value indicator calculation is necessary as such expenses are ordinary and reoccurring, as liabilities have continued to accrue in the current year related to the 2017/2018 Wildfires/Mudslides. Petitioner further contends Respondent misinterprets Property Tax Rules and Assessors' Handbooks by denying Petitioner's requested adjustments to the HCLD and CEA value indicators.

However, as Respondent points out, Petitioner has provided no legal or appraisal authority to support its proposed deduction of the past and non-ordinary expenses related to its pre-AB 1054 liabilities for property tax purposes. For purposes of the HCLD approach, Petitioner does not provide evidence or authority to support that such liabilities reduce Petitioner's property value. Additionally, as Respondent points out, for purposes of the CEA approach, such a deduction would be directly contrary to Property Tax Rule 8 and relevant Board guidance. Further, no legal or appraisal support is provided with respect to the proposed deduction to the HCLD or CEA value indicators, as such expenses are undisputedly related to past events that are unlikely to occur in the future, even if the liability from such past events is still being finalized as remaining claims are settled, litigated, and paid.

We find that Petitioner has not proven that Respondent erred by not deducting the claimed expenses from both the CEA and HCLD value indicators, nor has Petitioner shown that such expenses represent ordinary and future, anticipated operating expenses. Further, we concur with the Respondent that such expenses are explicitly excluded as deductions from the CEA approach under Property Tax Rule 8. It is undisputed that the liabilities at issue here are a result of past wildfires and mudslides (in 2017 and 2018), which are not appropriate to deduct from a future income capitalization. Based on the foregoing, Petitioner has not met its burden of proof as to this issue.

<u>Legal Issue 4</u>: Whether Petitioner Has Shown that Respondent Improperly Assessed $699 million in Wildfire Mitigation Capital Expenditures in the HCLD Value Indicator

<u>Findings of Fact and Related Contentions</u>

Petitioner contends that Respondent improperly assessed $1.6 billion of wildfire mitigation capital expenditures, based on the incorrect assumption that these assets generate a cash flow from ratepayers, allowing SCE to realize a return on investment for these capital expenditures. Petitioner contends that under AB 1054, SCE is required to make capital expenditures to the wildfire mitigation fund but is precluded from earning both a rate of return of and a return on the investment. Petitioner asserts this inclusion results in approximately $699 million that should be removed from SCE's HCLD indicator.

Petitioner further asserts that a potential buyer would not have the opportunity to recover the wildfire mitigation capital expenditures, and thus conclude that the first $1.6 billion of wildfire mitigation capital expenditures have little or no value. Petitioner cites the analysis in the draft 2020 EY report to support that a prospective buyer would not pay for a $1.6 billion capital expenditure that produces no return. Petitioner argues that Respondent's appraisal assumes that the expenditures are being capitalized and included in the rate base, on which utilities are permitted to earn a return, and concludes that if the capital expenditures are not included in Petitioner's rate base, they must be removed from the HCLD value indicator.

Petitioner then argues that in the alternative, these capital expenditures are intangible assets exempt from taxation, as such expenditures are statutorily required for Petitioner to continue to operate, and thus confer intangible rights upon Edison and any future purchaser.

Petitioner then adds that the property it spent $1.6 billion replacing has been discarded, so even if Petitioner may have the right to continue to receive a return with respect to the formerly owned property, since such property is no longer owned by Petitioner, the right to receive a return on the former property is an intangible right not assessable for property tax purposes. Further, the cost of this property should be removed from the HCLD indicator, and the income Edison receives with respect to this intangible right should be excluded from the CEA indicator.

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Petitioner further contends SAPD's explanation excerpted from AH 502, "The HCLD for property tax appraisal purposes, therefore, differs from the rate base as established by the regulatory agency. Some items included in the rate base are not included in the HCLD and some items included in the rate base are included in the HCLD," is misleading, and in context is only meant to acknowledge Construction Work in Progress (CWIP)'s exclusion from the rate base but taxability for property tax purposes. (AH 502, pp. 146-147.) Petitioner also contends SAPD misunderstands the concept of "return of" capital in a regulatory context. Specifically, Petitioner contends that while SAPD argues that Petitioner is being paid back for its cost through a special surcharge paid by ratepayers, CPUC D.20-11-007 requires that the special surcharges collected from ratepayers will repay the bondholders of the Recovery Bond, such that Petitioner will not recover either the return of or a return on the wildfire mitigation investments. Petitioner then argues that SAPD ignores basic valuation principles, as Petitioner contends assets, to have value under a CEA approach, must produce income, or, under the HCLD approach, must be included in the rate base.

Respondent contends no adjustment is appropriate for this issue. Respondent notes Petitioner essentially argues that because these costs are not included in rate base, these assets have no value and must be excluded entirely from the HCLD value indicator. However, Respondent explains that whether or not property is included in the rate base of a regulated utility is not solely determinative of whether it has "value" for property tax purposes and thus must or must not be included in HCLD. Respondent cites AH 502, which states:

> The HCLD for property tax appraisal purposes therefore, differs from the rate base as established by the regulatory agency. Some items included in rate base are not included in the HCLD, and some items not included in the rate base are included in the HCLD.

(AH 502, p. 146-147.) Therefore, Respondent contends Petitioner's view is false that all costs excluded from rate base must be excluded from HCLD.

Specifically, Respondent notes the wildfire mitigation capital expenditures have value, as Petitioner spent $1.6 billion to purchase those assets and had they not, Petitioner (or any potential purchaser) would not be compliant with AB 1054.

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Respondent notes SAPD has recognized that there is an impact on value to these capital expenditures being excluded from the rate base and has already made a proper adjustment in Petitioner's 2024 Board-adopted value.[21] Respondent notes when making capital expenditures, firms expect both a "return of" their invested capital as well as a "return on" their invested capital. Respondent notes a "return of" capital accounts for a recovery of the investment while a "return on" capital accounts for a reward for making an investment. (AH 502, p. 62.) Both of these components are captured in the capitalization rate, which provides explicitly or implicitly for both the return of and the return on capital.

Respondent contends that because AB 1054 prohibits Petitioner from earning a return on equity but does not prohibit earning a "return of" or a debt return on its capital expenditure, SAPD made appropriate adjustments to the HCLD cost indicator to account for this, by calculating the present value of the income using a discount rate that excludes the equity portion of the capitalization rate. The excluded equity portion represents the return *on* the investment, and properly leaves in the rate for return *of* the investment. Respondent then removed the difference between this present value amount and the total $1.6 billion capital expenditure, resulting in an approximately $736 million reduction to the HCLD value indicator, which was reflected in Petitioner's 2024 Board-adopted unitary value.

Respondent also contends that Petitioner's alternative arguments, that the capital expenditures are intangible assets exempt from taxation and that the property Petitioner spent $1.6 billion replacing has been discarded and is no longer owned by Petitioner, are each claimed without evidence. Respondent asserts that these arguments ignore the fact that $1.6 billion dollars of tangible, depreciable equipment was purchased and is currently installed as a part of Petitioner's physical infrastructure. Respondent states that the equipment that was actually replaced and discarded will be removed from the HCLD value indicator and therefore has no unitary value, as is done with all equipment that is retired and removed from an assessee's books and records.

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[21] $736 million was deducted from the HCLD value indicator.

Applicable Law and Appraisal Principles

Burden of Proof

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

Value Standard

See Issues 1 and 2, Applicable Law, p. 12.

HCLD Approach to Value

See Issues 1 and 2, Applicable Law, pp. 12-13.

Analysis and Disposition

Respondent is presumed to have correctly determined the value of the property at issue, and Petitioner bears the burden of proving otherwise. Petitioner contends that Respondent should deduct the entire $1.6 billion wildfire capital expenditures from its HCLD value indicator because Petitioner is not allowed to earn a rate of return on the expenditures, and a prospective buyer would not pay for a $1.6 billion capital expenditure that produces zero return. Petitioner also argues that if the capital expenditures are not included in the rate base, they should be removed from the HCLD value indicator. However, Respondent explains that the HCLD approach for property tax appraisal purposes differs from rate base, and that the capital expenditures have value as Petitioner spent $1.6 billion to purchase assets from which Petitioner will earn a return of the expenditures through depreciation and a return on the expenditures through the reimbursement of interest paid for debt service. Respondent additionally contends that since AB 1054 prohibits Petitioner from earning an equity return on this capital expenditure but does not prohibit it from earning a return of or a debt return on its capital expenditure, Respondent has already adjusted the HCLD value indicator appropriately: by calculating the present value of the income using a discount rate that excludes the equity portion of the capitalization rate, reflecting that Petitioner will not receive a *return on* the investment, but properly leaving the rate for *return of* its capital expenditure, which Petitioner will receive. Respondent noted this calculation resulted in an approximately $736 million reduction to the HCLD value indicator, which was already reflected in Petitioner's 2024 Board-adopted unitary value. Accordingly, we concur with Respondent and find that Petitioner has not proven error within Respondent's HCLD calculation.

While Petitioner contends in the alternative that the capital expenditures are intangible assets exempt from taxation, Petitioner provides no legal or appraisal basis or authority to support this contention.[22] Petitioner further alternatively contends that the property Petitioner spent $1.6 billion replacing has been discarded and is no longer owned by Petitioner, but, as Respondent points out, Petitioner has provided no specific evidence of retired assets being assessed within its 2024 unitary value. Further, Respondent states that the $1.6 billion dollars of tangible, depreciable equipment was purchased and is currently installed as part of Petitioner's physical infrastructure. Accordingly, we concur with Respondent that neither AB 1054, nor any other provision of law identified supports the exemption of these assets from property taxation.

Based on the evidence and arguments submitted the primary and alternative arguments, we find that Petitioner has not met their burden of proof as to this issue.

<u>Legal Issue 5:</u> Whether Petitioner Has Shown that Respondent Erred in Its Treatment of Wildfire Insurance Fund Related Contributions.

<u>Findings of Fact and Related Contentions</u>

Petitioner notes that SCE made an initial contribution of $2.4 billion to the Wildfire Insurance Fund, which is intended to provide some insurance coverage in the event of a catastrophic wildfire event, on September 9, 2019, and thereafter Petitioner will make 10 annual contributions of approximately $95 million per year to the fund, consistent with section 3292, subdivision (a) of the California Public Utilities Code.[23] Petitioner asserts Respondent erred in its treatment of the Wildfire Insurance Fund-related contribution by ignoring the initial contribution of $2.4 billion, instead arguing that the initial contribution and annual payments should be treated as insurance premiums and spread ratably over Petitioner's updated estimated 20-year coverage period, yielding an annual estimated insurance fund expense of $213 million. Petitioner contends the proper treatment of these

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[22] Cal. Const. Art. XIII, section 1 states: "Unless otherwise provided by this Constitution or the laws of the United States [a]ll property is taxable and shall be assessed at the same percentage of fair market value."
[23] Petitioner cites its Form 10k (2024), at pp.151-152.

expenses would reduce the CEA value indicator by $1,447,865,602 and the overall unitary value by $1,085,899,202.

Petitioner claims the Wildfire Insurance Fund contributions are being treated similarly to prepaid insurance under Generally Accepted Accounting Principles (GAAP). As no period of coverage was provided in AB 1054, Petitioner is allocating the total expense ratably based on its updated estimated twenty-year period of coverage.

Next, Petitioner refutes SAPD's arguments, presumably from the 2020 petition discussion, that a prospective purchaser would not consider the $2.4 billion prepaid insurance in the company's value. Instead, Petitioner contends Wildfire Insurance Fund contributions are equivalent to the payment of insurance premiums, and that a potential purchaser would be willing to pay more for a utility that had prepaid this annual contribution, as compared to a utility that had not done so, due to the increased estimated insurance premiums the purchaser would have to make absent these fund contributions.

Then, Petitioner argues that SAPD is mischaracterizing the prepaid expense as excludable amortization or depreciation expense, as the expense at issue constitutes prepaid insurance or some other intangible asset that will reduce future expenses, as the initial contribution was a legal prerequisite that gave Petitioner the right to participate in the Fund, which is an intangible right.

Additionally, Petitioner contends that AH 502 states that property insurance may be prepaid for three years and deducted as an expense in a direct capitalization income approach, though in Petitioner's case the coverage is estimated at 15 years, and that an appraiser would annualize this expense in direct capitalization.

Petitioner further contends that the $213 million annual expense should be included in the CEA value indicator because future insurance premiums are bound to increase consistent with the wildfire risk conditions in California.

Petitioner additionally notes Respondent's proper treatment of such expenses may actually increase income in future years due to reduced future expenses, and that portion of the increased income related to the initial contribution should be removed from the income approach as income from an intangible asset.

Finally, Petitioner claims that Respondent's treatment of the fund contributions is nonuniform in its application to all state assessees, claiming that the initial contribution was allowed for another state assessee. On this basis, Petitioner asserts respondent is acting arbitrarily, unfairly, or otherwise non-uniform in its treatment of Petitioner.

Petitioner further contends that SAPD has incorrectly interpreted *De Luz Homes, Inc. v. County of San Diego* ("*De Luz*") (1955) 45 Cal.2d 546, explaining that while *De Luz* precludes a deduction for "depreciation of the property," it does not preclude a deduction for operating and maintenance expenses, and prepaid insurance are such expenses. Petitioner cites to AH 502 to support its argument, wherein under a direct capitalization method, like the CEA, "expenses are annualized even though some expenditures may not actually occur on an annual basis" and prepaid property insurance is provided as an example.

Additionally, Petitioner references that Member Gaines' comments in the Board hearing of their 2020 petition appeared to support this treatment of such expenses as annualized expenses removable from the CEA calculation.

Petitioner argues that while Respondent is attempting to create a requirement that another future AB 1054-like contribution will occur, the guidance does not create a requirement that the deduction of the prepaid insurance is only allowed when an identical payment is guaranteed to occur in the future. Petitioner also asserts that these prepaid insurance expenses would be viewed as relevant expenses to any prospective buyer and be considered regular and reoccurring in light of wildfire likelihood in California. Additionally, Petitioner notes the requested treatment is consistent with its audited financial statements. Petitioner concludes that the adjustment of approximately $1.12 billion (CEA-adjusted present value of the annual expensing of $214 million over the remaining coverage period) for the prepaid insurance contribution of $2.4 billion and the annual contributions of $95 million is reasonable and should be allowed.

Respondent contends that consistent with Property Tax Rule 8 and Board issued appraisal guidance, Respondent appropriately disallowed the $2.4 billion initial contribution as an expense in the CEA value indicator. (*UVM* pp. 35-37 and AH 502, p. 74.) Respondent explains amortization and depreciation are not deducted when computing the future income stream to be capitalized because doing so would artificially lower that future income stream by subtracting non-cash expenses and would also cause the future income stream to no longer be a *future* income stream (since it would then include past expenses); in other words, deducting either is contrary to the principles on which the CEA indicator is premised. Thus, pursuant to Property Tax Rule 8 and AH 502's interpretation thereof, Respondent did not allow the $2.4 billion initial contribution as an expense in the CEA value indicator because the contribution was made in a previous year.

Respondent contends Petitioner admits that the Wildfire Insurance Fund-related initial contribution is both a past, non-recurring expense and that it is now being amortized over a 20-year period[24] and Respondent maintains the treatment of amortized costs in the CEA indicator of value is explained in Rule 8 and AH 502. Further, in *De Luz*, the California Supreme Court made clear that amortized costs are not deducted from the anticipated income to be capitalized.[25] While Respondent acknowledges the specific items which the *De Luz* Court considered were leasehold improvements, Respondent maintains the Court's logic applies to capitalized assets generally.

Additionally, Respondent notes that the accounting treatment of the initial contribution is undisputed: an asset entitled "Wildfire Insurance Fund contributions" was created on Petitioner's balance sheet and a corresponding amortized portion is deducted on SCE's income statement. Thus, Respondent asserts that consistent with AH 502, *De Luz*, and generally accepted appraisal practice, the initial contribution's treatment for property tax valuation purposes should also be undisputed.

Then, Respondent asserts Petitioner's contention that the expense be treated akin to prepaid insurance, ratably deducted over some coverage period, misses the issue, as the issue is not over whether the initial contribution is or is not prepaid insurance. Respondent confirms that Petitioner's

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[24] Petitioner's 2024 10-k indicates the asset was amortized over 15 years in 2022 and 2023. (SCE 10-k, p. 74.)

[25] Respondent includes selected excerpts to support its summary of *De Luz.* (SAPD Analysis, p. 14.) In determining what costs would be considered in valuing a leasehold interest under a capitalization of income method, the Court stated that:

> ...anticipated net earnings equal expected gross income less necessary expenditures for maintenance, operation, and taxes.[fn omitted] *No deduction is made for the cost of the lease to the present lessee, i.e., his charges for rent and amortization of improvements*, for to a prospective assignee the value of a leasehold is measured solely by anticipated gross income less *expected necessary* expenditures.

(*De Luz Homes, Inc. v. County of San Diego, supra*, p. 566, emphasis added.) The Court concluded:

> Furthermore, in determining the income to be capitalized to establish value for appraisal purposes, *no deduction can be made for amortization*. [Citation.] '[N]o concept of income which includes ... depreciation in capital value as a positive or negative item of income, is acceptable as a basis of valuation under the 'capitalized income' method.' [Citation.]

(*Ibid*.)

ordinary insurance expense was allowed, but instead asserts the issue is over whether the initial contribution is an ordinary, recurring expense and Petitioner has admitted that it is not in its 2024 10-K.[26]

Next, Respondent contends Petitioner's argument that the amortized expense will be reoccurring due to the new reality of wildfires is also misframed; instead, Respondent asserts the issue is whether the Petitioner will need to make another AB 1054-like initial contribution, something no one can know at this time.

Respondent also notes that Petitioner itself does not know how long the AB 1054 fund will last, as in 2019, SCE estimated 10 years (SCE 2020 10-k, p. 65), while in 2020-2023, the estimate was increased to 15 years in its 2020 Form 10-k (SCE 2020 10-k, p. 122.). However, Respondent notes that in 2019, the CPUC stated that "arguments positing that the fund may be exhausted before 2035 are premature." (CPUC, Decision D19-12-056, p. 37.) Accordingly, Respondent concludes any deduction allowed of this initial contribution based on some likelihood that some future AB 1054-like contribution will have to be made is pure speculation. Respondent summarizes that because the $2.4 billion initial contribution is a past expense that need not be paid again, and because its deduction as amortization in future years is only for the purpose of computing accounting net income, the initial contribution is not deductible from the future income stream to be capitalized for property tax purposes.

Respondent also reaffirms that while the initial contribution is not deductible, the required annual contributions to the Wildfire Insurance Fund are allowable, as they are ordinary expenses expected to be paid for a 10-year term. Respondent notes this resulted in a $444 million reduction to the CEA value indicator, which has already been included in Petitioner's 2024 Board-adopted value.

Finally, Respondent disputes inequitable treatment amongst state assessees occurred, as the allowance or disallowance of the initial contributions were based on a consistent application of the same principles to all utilities who contributed to the fund. Respondent further affirms that all other arguments made by Petitioner on this issue remain unpersuasive, particularly that valuation violates

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[26] Edison International's 2024 Form 10-K, p. 6, where SCE lists various "non-core items" that "management does not consider representative of ongoing earnings," which includes a line item under this descriptor stating, "Charges of $213 million ($153 million after-tax) recorded in 2023 and $214 million ($154 million after-tax) recorded in 2022 from the amortization of SCE's contributions to the Wildfire Insurance Fund."

Article XIII, Section 1 of the California Constitution, the Due Process Clauses of the state and federal Constitutions, the Equal Protection Clauses of the state and federal Constitutions, and those that attempt to liken the initial contribution to a deductible intangible asset.

Applicable Law and Appraisal Principles

Burden of Proof

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

Value Standard

See Issues 1 and 2, Applicable Law, p. 12.

Income Approach to Value

See Issues 1 and 2, Applicable Law, pp. 13-14.

The Income Approach: Amortization and Depreciation

The income approach to value is generally described as any method that converts future anticipated income into present value. (UVM, p. 35.) It is premised on the assumption that investors will buy and sell property based on the income it is *expected* to yield. (*Ibid*.) The income that is converted into present value is appraisal income, or "net return" as defined by Rule 8. (UVM, pp. 35-37; Rule 8, subd. (c).) Net return is the difference between gross return and gross outgo. (Rule 8, subd. (c).) Amortization and depreciation are explicitly excluded from gross outgo. (*Ibid*.) AH 502 explains why this is the case:

> The reference to depreciation and amortization in subdivision (c) [of Rule 8] refers to the accounting concept of depreciation (in this context, **amortization is a synonym for depreciation**). Accounting depreciation and **amortization** charges are **non-cash expenses** designed to spread, or match, the cost of a **previously incurred** cash expenditure over future accounting periods. There are at least two theoretical reasons for the exclusion of accounting depreciation charges as expenses. First, doing so incorporates the recognized cash flow concept of the amount of income to be capitalized. Second, accounting depreciation is a means of capital recovery based on past expenditures. **However, in real estate valuation the point is not to recover past expenditures, but rather to estimate the value that future income will be able to recover.**

(AH 502, p. 74; Emphases added.) In other words, amortization and depreciation are not deducted when computing the future income stream to be capitalized because doing so would artificially lower that future income stream by subtracting non-cash expenses and would also cause the future income stream to no longer be a *future income* stream, as it would include past expenses. The *Supreme Court* has confirmed this understanding in *De Luz*; the Court concluded,

> Furthermore, ***in determining the income to be capitalized*** to establish value for appraisal purposes, ***no deduction can be made for amortization***. [Citation.] '[N]o concept of income which includes ... depreciation in capital value as a positive or negative item of income, is acceptable as a basis of valuation under the 'capitalized income' method.' [Citation.]

(*De Luz Homes, Inc. v. County of San Diego, supra*, p. 566, emphasis added.)

Analysis and Disposition

Respondent is presumed to have correctly determined the value of the property at issue, and Petitioner bears the burden of proving otherwise. Petitioner contends that Respondent's calculated present value deduction for the remaining, future Wildfire Insurance Fund payments understates the annualized and prepaid-expenses associated with the full contribution to the wildfire insurance fund; instead, Petitioner asserts the initial contribution of $2.4 billion and the 10 annualized payments should be treated as prepaid insurance expenses, and capitalized within the Respondent's CEA value indicator calculation as expenses over a 15 or 20-year period, as such treatment is reasonable in its opinion, as well as consistent with its accounting treatment of such expenses. However, Respondent notes Petitioner admits the initial contribution has been amortized, and contends amortized or past, non-ordinary expenses are not properly deducted from the CEA value calculation, as a capitalized earning approach only correctly reflects future, ordinary expenses, consistent with relevant Property Tax Rule 8 and appraisal principals.

We find that Petitioner has not shown specific evidence or argument to prove error within Respondent's calculation, which deducts the present value of the future remaining annual payments of $95 million. Further, we find Respondent's calculation is consistent with relevant law, Property Tax Rule 8, and relevant Board guidance, as the CEA value indicator is designed to capitalize future income. We also concur with Respondent that Petitioner has not shown that these disputed expenses require treatment as an intangible or nontaxable right under relevant law. Finally, we find that

Petitioner has provided no evidence of inequitable treatment, violation of due process and equal protection clauses, and otherwise unfair or inequitable application of relevant law compared to other state assessees, nor have we seen any evidence thereof. Based on the foregoing, we deny the petition as to this issue.

DECISION

Accordingly, the 2024 petition for reassessment is denied as to all issues, thereby affirming the 2024 Board-adopted unitary value.*

Sally J. Lieber, Chair

Antonio Vazquez, Member

Mike Schaefer, Member

Malia M. Cohen, Controller

*This decision was rendered in Sacramento, California on December 17, 2024. The summary decision document memorializing this decision was approved on January 23, 2025, in Sacramento, California.

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