BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. RESPONDENT, Respondent. INTERVENER, Intervener.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION** Appeal No.: 12-2091 Account No. ##### Tax Type: Personal Property / Locally Assessed Tax Years: YEAR-1, YEAR-2, YEAR-3 & YEAR-4 Judge: Chapman

This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process.
Pursuant to Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.

Presiding:

D'Arcy Dixon Pignanelli, Commissioner
Michael J. Cragun, Commissioner
Robert P. Pero, Commissioner
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner:	PETITIONER ATTORNEY-1
	PETITIONER ATTORNEY-2
	PETITIONER WITNESS-1
	APPRAISER-2
	APPRAISER-1
	PETITIONER WITNESS-2
For Respondent:	RESPONDENT ATTORNEY-1
	RESPONDENT ATTORNEY-2
	RESPONDENT ATTORNEY-3
	APPRAISER-3
	APPRAISER-4
	RESPONDENT WITNESS-1

Appeal No. 12-2091

RESPONDENT WITNESS-2
RESPONDENT WITNESS-3
For Intervener: INTERVENER ATTORNEY

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on DATE through DATE. Closing arguments were held on DATE. On DATE, the parties submitted the following post-hearing documents: 1) PETITIONER ("PETITIONER" or "taxpayer") submitted its Proposed Findings of Fact, Conclusions of Law, and Final Decision; 2) the RESPONDENT ("RESPONDENT" or "County") submitted its Proposed Findings of Fact, Conclusions of Law, and Final Decision; and 3) the INTERVENER ("INTERVENER") submitted its Post-Formal Hearing Brief. On DATE, the parties submitted additional post-hearing documents, as follows: 1) PETITIONER submitted its Response to RESPONDENT'S Proposed Findings of Fact, Conclusions of Law, and Final Decision; 2) RESPONDENT submitted its Response to PETITIONER'S Proposed Findings of Fact, Conclusions of Law, and Final Decision; and 3) the INTERVENER submitted its Partial Joinder in RESPONDENT'S Reply to PETITIONER'S Proposed Findings of Fact, Conclusions of Law, and Final Decision. Based upon the pre-hearing briefs, evidence and testimony presented at the Formal Hearing, and the post-hearing submissions, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax at issue is personal property tax.

2. The tax years at issue are YEAR-1, YEAR-2, YEAR-3, and YEAR-4. The lien dates in question are January 1, YEAR-1, January 1, YEAR-2, January 1, YEAR-3, and January 1, YEAR-4. The four years at issue may be referred to collectively herein as the "tax years."

3. On DATE, the RESPONDENT issued an Order, in which it sustained the assessed value of PETITIONER'S personal property for Account Number ##### for each of the four years at issue. This account concerns personal property that PETITIONER owes at its PETITIONER'S FACILITY in XXXXX County ("PETITIONER'S FACILITY").

4. PETITIONER timely filed an appeal of the RESPONDENT'S Order to the Utah State Tax Commission. The parties agreed to waive the Initial Hearing and proceed directly to a Formal Hearing.

5. On DATE, PETITIONER and the County submitted a Joint Stipulation for Scheduling Order in preparation of the Formal Hearing, which had already been scheduled for DATE through DATE. This joint stipulation was signed by PETITIONER ATTORNEY-1, PETITIONER'S attorney, and RESPONDENT ATTORNEY-1, RESPONDENT'S Attorney, and set forth the dates by which the parties would exchange appraisals, complete discovery, exchange exhibits, etc. The Commission signed and issued the Scheduling Order on DATE.

6. On DATE, PETITIONER and the County submitted a Stipulated Motion for Protective Order. On DATE, the Commission issued the Protective Order.

7. Between DATE and DATE, a number of motions were filed, including: 1) a DATE Motion in Limine filed by RESPONDENT[1] to preclude PETITIONER from seeking a refund or adjustment to its original assessments for the YEAR-1 and YEAR-2 tax years based on its argument that these years involved escaped property assessments; 2) a DATE Motion for Continuance filed by RESPONDENT, in which the county asked that in the event the Commission denied its Motion in Limine, the Commission continue the Formal Hearing to a later date to allow it sufficient time to prepare to defend PETITIONER'S appeal for YEAR-1 and YEAR-2; 3) a DATE Motion to Intervene filed by the INTERVENER so that it could defend Utah Admin. Rule R884-24P-33 ("Rule 33"), if it came under attack in the appeal; and 4) a DATE Motion in Limine to Disallow the County's Second Amended Witness Designation filed by PETITIONER, in which the taxpayer asked the Commission not to allow RESPONDENT to add a new witness, RESPONDENT WITNESS-1, because the county had not designated THE witness by the deadline

[1] This motion was signed by RESPONDENT ATTORNEY-1, and RESPONDENT ATTORNEY-3, who along with RESPONDENT ATTORNEY-2, were identified as Special Deputy RESPONDENT Attorneys. RESPONDENT ATTORNEY-1 had represented RESPONDENT in this matter since DATE. This DATE motion is the first document that the Tax Commission received indicating that RESPONDENT ATTORNEY-3 and RESPONDENT ATTORNEY-2 were also representing RESPONDENT as counsel. On DATE, RESPONDENT ATTORNEY-3 and RESPONDENT ATTORNEY-2 submitted a formal entry of appearance in the matter.

established in the Scheduling Order. PETITIONER opposed the first three motions, RESPONDENT opposed the fourth motion, and the parties submitted memoranda supporting and/or opposing the motions.

8. On DATE, the Commission held a hearing concerning the four motions described in the prior paragraph, at which it heard oral arguments. On DATE, the Commission issued its Order on Motions, in which it: 1) denied RESPONDENT'S Motion in Limine concerning the scope of review for YEAR-1 and YEAR-2;[2] 2) denied RESPONDENT'S Motion for Continuance;[3] 3) granted the INTERVENER'S Motion to Intervene, subject to the seven limiting conditions that the Commission listed in the Order; and 4) denied in part and granted in part PETITIONER'S Motion in Limine to Disallow the County's Second Amended Witness Designation by allowing RESPONDENT to call RESPONDENT WITNESS-1 as a witness, but limiting THE testimony as described in the Order.

9. At the close of PETITIONER'S presentation of its case at the Formal Hearing, RESPONDENT made a Motion for Directed Verdict *or in the alternative*, For Remand to Board of Equalization Authorizing Assessor to Perform a Unitary Assessment in Lieu of Rule 33 Requirements. The County argued that PETITIONER had not met its burden of proof because it did not rely on the percent good schedules found in Rule 33 and, instead, relied on unitary valuation methods in deriving its proposed values for its personal property. In the alternative, the County asked the Commission to remand the matter back to the local county level so that it could also perform unitary assessments of PETITIONER'S property. The Commission did not address PETITIONER'S Motion at the time in was made at the hearing, but reserved a decision until both PETITIONER and the RESPONDENT had presented their cases at the Formal Hearing.

10. On DATE (after the DATE through DATE Formal Hearing but prior to the DATE Closing Arguments), the Commission issued an Order Denying Respondent's Motion for Directed Verdict *or in the*

---

[2] The Commission agreed with PETITIONER that the audit assessments that RESPONDENT issued for YEAR-1 and YEAR-2 concerned its entire valuation, not just the valuation of escaped property. As a result, the Commission found that PETITIONER could contest all of its property value not only for YEAR-3 and YEAR-4 (where the right to appeal the full assessments are not in dispute), but also for YEAR-1 and YEAR-2.

[3] The Commission denied RESPONDENT'S motion because the RESPONDENT did not show "adequate cause" for the continuation and because PETITIONER would have been unduly prejudiced by the continuance.

alternative, For Remand to Board of Equalization Authorizing Assessor to Perform a Unitary Assessment in Lieu of Rule 33 Requirements. The Commission denied the County's Motion for Directed Verdict, indicating that the motion was moot because the Commission heard the RESPONDENT'S case.[4] The Commission noted that it "was not convinced, at the close of PETITIONER'S direct case, that PETITIONER had not presented a prima facie case supporting its request for lower values for the years at issue." In addition, the Commission denied the County's alternative request to remand the matter back to the local level so that the County could prepare unitary assessments of PETITIONER'S personal property because the County had been aware of PETITIONER'S position since the inception of the case, because to rule otherwise would be prejudicial to PETITIONER, and because "[i]t would be unjust for the Tax Commission to decide not to issue a decision at this late stage of the process and remand the matter back to the County level where the whole process would begin again."

Background

11. PETITIONER is a wholly-owned subsidiary of PARENT COMPANY. PARENT COMPANY is an XXXXX company, whose many subsidiaries are involved in XXXXX; and in XXXXX.

12. PETITIONER'S FACILITY located in XXXXX County is involved with XXXXX into different products such as XXXXX, XXXXX, XXXXX, etc.

13. At issue is the "fair market value" of the personal property located at the PETITIONER'S FACILITY. The items of personal property are reflected on the fixed asset ledger of PETITIONER and are reported by PETITIONER through annual filings made with the XXXXX County Assessor.[5]

14. PETITIONER is contesting the values of its personal property on two premises, one that the values imposed by the County, which are derived from the application of the percent good table found in Rule 33, overestimated the fair market value of its property, and two, that the values imposed by the County

---

[4] In this order, the Commission further instructed the parties, as follows:

> However, to the extent that the RESPONDENT is asking in its Motion for the Commission to rule on whether PETITIONER can challenge its personal property assessment with unitary valuation methods, the Commission is reserving such a ruling until it issues its final decision in this matter.

[5] Formal Hearing Exhibit ("Exhibit") 47

are inequitably high in comparison to the assessed values of other FACILITIES' personal property. In addition, the parties disagree on the methodology to value personal property. RESPONDENT valued the individual items of personal property separately.[6] PETITIONER, on the other hand, valued the PETITIONER'S FACILITY as a unit and removed from that value estimates for intangible property, inventory, and real property.[7] The County contends that PETITIONER'S "unitary" valuation of its personal property should not be allowed.

15. The parties assert the following values:

Tax Year	RESPONDENT Assessments[8]	PETITIONER'S Proposed Values[9]
YEAR-1	$$$$$	$$$$$
YEAR-2	$$$$$	$$$$$
YEAR-3	$$$$$	$$$$$
YEAR-4	$$$$$	$$$$$

PETITIONER'S Property

16. PETITIONER'S FACILITY is one of ##### FACILITIES location along the UTAH AREA.[10] These FACILITIES are location within ##### miles of one another in XXXXX County and XXXXX County.

17. The PETITIONER'S FACILITY was originally built in DATE and, at that time, it consisted of only an XXXXX. Over time, the PETITIONER'S FACILITY added multiple different XXXXX, including a XXXXX, XXXXX, XXXXX, and XXXXX.[11]

18. In DATE, PETITIONER entered into an agreement with the XXXXX wherein the XXXXX XXXXX that certain equipment be installed to XXXXX. This agreement is referred to as the "AGREEMENT." PETITIONER has spent a significant amount of capital in recent years for the equipment required under the AGREEMENT.[12]

---

[6] Exhibits 1 through 12.
[7] Exhibits 22 through 25.
[8] Exhibit 46.
[9] Exhibits 22 through 25.
[10] Exhibit 20.
[11] Exhibit 24, pp. 40, 43.
[12] Exhibit 29.

19. REDACTED.[13]

20. A XXXXX was constructed in DATE and DATE. A XXXXX was installed in DATE, and a second XXXXX was installed in YEAR-2.[14]

21. The PETITIONER FACILITY also has property commonly termed "offsite" property that includes XXXXX, XXXXX, XXXXX, XXXXX, vehicles and XXXXX.[15] During the tax years, PETITIONER authorized the construction of two XXXXX and XXXXX, in part, based upon the fact that REDACTED[16].

22. PETITIONER expended substantial capital expenditures at its PETITIONER FACILITY during DATE through YEAR-3, as follows:[17]

Year	Amount
YEAR	$$$$$
YEAR	$$$$$
YEAR	$$$$$
YEAR	$$$$$
YEAR-1	$$$$$
YEAR-2	$$$$$
YEAR-3	$$$$$
Total	$$$$$

23. PETITIONER justified its expenditures required by the AGREEMENT, in part, on the basis that the projects REDACTED.[18]

24. In DATE, PETITIONER indicated that the AGREEMENT obligates it to make an estimated $$$$$ of XXXXX investments in the PETITIONER'S FACILITY over the next ##### years.[19] REDACTED.[20]

---

[13] Exhibit 24, pp. 43-45; Exhibit 35.
[14] Exhibit 24, p. 40.
[15] Exhibit 24, pp. 45-47; Exhibit 35.
[16] Exhibit 36, at bates 746.
[17] Exhibit 43.
[18] Exhibit 29, p. XXXXX 000143.
[19] APPRAISER-1, an independent appraiser with APPRAISER-1'S COMPANY hired by PETITIONER, indicates that with the exception of the XXXXX built in DATE and DATE, the most recent capital spent at the PETITIONER'S FACILITY has been on XXXXX requirements and/or to meet REGULATORY REQUIREMENTS. Exhibit 24, p. 40
[20] Exhibit 29, pp. XXXXX 000154-000156

25. The PETITIONER FACILITY has a stated operable capacity of ##### based on XXXXX.[21] The PETITIONER FACILITY reported XXXXX for YEAR-3, YEAR-2, and YEAR-1 of #####, #####, and #####. This reflects a XXXXX of %%% for YEAR-3, %%% for YEAR-2, and %%% for YEAR-1.[22]

26. APPRAISER-1 represented that "[i]n general, FACILITY operational efficiencies tend to become optimized at rates in the high %%% to low %%% range."[23]

Assessments

27. On or around May 15, YEAR-1, PETITIONER submitted a Personal Property Signed Statement for YEAR-1, which showed a total market value of $$$$$.[24] PETITIONER, however, had previously expressed to the County that the percent good tables of Rule 33 did not equate to fair market value and that additional adjustments were required to account for all forms of obsolescence in order to get to fair market value. Whereas Rule 33 allowed a %%% obsolescence adjustment for XXXXX, PETITIONER'S WITNESS 2, a PETITIONER employee, had discussed with the County about applying a %%% and %%% obsolescence mix. The County responded that it did not have authority to lower the obsolescence adjustment to %%% and indicated that APPRAISER-3, an employee of the Property Tax Division, would respond to the request. On DATE, APPRAISER-3 information PETITIONER'S WITNESS 2 that the Commission would not agree to the additional reduction for YEAR-1, but indicated that PETITIONER still had its appeal rights for YEAR-1.[25] The INTERVENER and RESPONDENT decided to audit PETITIONER'S personal property for YEAR-1, and the audit commenced June YEAR-1.[26]

---

[21] Exhibits 24, 35 and 58.
[22] Exhibit 35, p. 51; Exhibit 58.
[23] Exhibit 24, p. 34.
[24] Exhibit 1. PETITIONER later submitted an amended Signed Statement for YEAR-1 (Exhibit 2).
[25] Exhibit 16 (emails between PETITIONER'S WITNESS 2 and NAME, and to APPRAISER-3).
[26] Exhibit 3.

28. On May 14, YEAR-2, PETITIONER filed its Signed Statement for the YEAR-2 tax year, which showed a total market value of $$$$$.[27]

29. Because the audit for YEAR-1 carried over into YEAR-2, the INTERVENER also audited PETITIONER'S personal property for the YEAR-2 tax year. On December 20, YEAR-3, the County provided PETITIONER with a copy of revised assessments based on its audit results. The audit was conducted by APPRAISER-3, who concluded that the value of PETITIONER'S personal property was $$$$$ for YEAR-1 and $$$$$ for YEAR-2.[28] The assessments were made by valuing each item of PETITIONER'S personal property using the percent good tables found in Rule 33. PETITIONER appealed the audit assessment for YEAR-1 and YEAR-2.

30. On May 11, YEAR-3, PETITIONER submitted its Personal Property Signed Statement for the YEAR-3 tax year, which showed a total market value of $$$$$. On May 12, YEAR-3, PETITIONER filed an appeal for the YEAR-3 tax year, in which it appealed this value.[29]

31. On May 14, YEAR-4, PETITIONER submitted its Personal Property Signed Statement for the YEAR-4 tax year, which showed a total market value of $$$$$.[30] Also on May 14, YEAR-4, PETITIONER filed an appeal for the YEAR-4 tax year, in which it appealed this value.[31]

32. The RESPONDENT did not request an audit of PETITIONER'S personal property for YEAR-3 and YEAR-4. The appeals for YEAR-1 through YEAR-4 are collectively referred to here as "the Appeals." On DATE, PETITIONER and the RESPONDENT entered into a stipulation wherein they agreed that the Board could enter an order denying PETITIONER'S Appeals without actually holding a hearing on the matter. On DATE, the Board entered an order in which it sustained the values established

[27] Exhibit 4.
[28] Exhibit 5. These assessed amounts were higher than the amounts shown on PETITIONER'S original or amended Signed Statements for these years.
[29] Exhibits 9 and 10.
[30] Exhibit 11.
[31] Exhibit 12.

by the audit for YEAR-1 and YEAR-2 ($$$$$ and $$$$$ respectively) and sustained the values shown on PETITIONER'S Signed Statement for YEAR-3 and YEAR-4 ($$$$$ and $$$$$ respectively).[32]

33. On or around DATE, PETITIONER appealed the decision of the RESPONDENT to the Tax Commission.[33]

34. On DATE (more than a year after the RESPONDENT issued its decision and about two months prior to the Formal Hearing), the County issued a Personal Property Statement to PETITIONER for the for tax years at issue included with this statement were revised Personal Property Lists for YEAR-3 and YEAR-4, which show that the County increased the values shown on PETITIONER'S Signed Statements for these years to $$$$$ for YEAR-3 and to $$$$$ for YEAR-4.[34]

35. At the hearing, the County indicated that it subsequently increased the amounts shown on PETITIONER'S YEAR-3 and YEAR-4 Signed Statements to reflect adjustments similar to those that were made in the audit assessment for YEAR-1 and YEAR-2.[35]

36. APPRAISER-3 stated that he performed his audit assessments for YEAR-1 and YEAR-2 by valuing each item of PETITIONER'S personal property using the Commission's percent good tables provided in Rule 33. He also explained the trending factors on which the tables rely are derived from Marshal and Swift and that class lives are derived from various sources, including IRS depreciation lives. Pursuant to Rule 33(6)(h)(iii)(B) (2009), items of personal property related to the AGREEMENT were reduced by %%% for additional obsolescence.[36] APPRAISER-3 testified that the depreciation lives employed in Rule 33 are conservative and, thus, produce lower values.[37]

37. No party showed that the values determined in the INTERVENER'S audit for YEAR-1 and YEAR-2 do not reflect the values that are obtained by applying the Rule 33 percent good tables to

---

[32] Exhibit 13.
[33] Exhibit 14.
[34] Exhibit 15.
[35] Testimony of RESPONDENT WITNESS-1, who is the XXXXX in the RESPONDENT Assessor's Office.
[36] APPRAISER-4, an independent appraiser hired by the RESPONDENT, does not believe that the additional %%% reduction for REGULATORY expenditures, as provided by Rule 33, is appropriate. Exhibit 35, p. 40.
[37] As an example, APPRAISER-3 stated that the IRS places FACILITY processing equipment in a class with a 16-year life while Rule 33 depreciates such equipment as Class 8 equipment with a 12-year life.

PETITIONER'S personal property for these two years. Furthermore, no party showed that the values the RESPONDENT sustained for YEAR-3 and YEAR-4, as reflected on PETITIONER'S Signed Statements for these years, do not reflect the values that are obtained by applying the Rule 33 percent good tables to PETITIONER'S personal property for these two years.

PETITIONER'S Fair Market Value Argument

38. For each year at issue, PETITIONER submitted a Summary Appraisal Report prepared by APPRAISER-1, in which he estimated the fair market value of PETITIONER'S personal property to be $$$$$ for YEAR-1, $$$$$ for YEAR-2, $$$$$ for YEAR-3, and $$$$$ for YEAR-4.[38] PETITIONER asks the Commission to reduce the values of its personal property to these amounts. APPRAISER-1 has extensive experience valuing FACILITIES for property tax purposes.

39. For YEAR-1 and YEAR-2, the RESPONDENT did not submit an appraisal or other expert report, but relied on the values shown in the audit assessment for these two years. Accordingly, the RESPONDENT contends that the value of PETITIONER'S personal property is $$$$$ for YEAR-1 and $$$$$ for YEAR-2. These are the values sustained by the RESPONDENT at the local level. The RESPONDENT, as well as the INTERVENER, asks the Commission to also sustain these values.

40. For YEAR-3 and YEAR-4, no audit assessment was performed. The RESPONDENT, however, does not rely on the values it sustained in its decision at the local level for these years, which were the values shown on PETITIONER'S YEAR-3 and YEAR-4 Signed Statements. Instead, the RESPONDENT contends that the value of PETITIONER'S personal property is $$$$$ for YEAR-3 and $$$$$ for YEAR-4, as shown on the revised Personal Property Lists the County prepared after the RESPONDENT issued its decision and after PETITIONER appealed that decision to the Tax Commission. Accordingly, the RESPONDENT, as well as the INTERVENER, asks the Commission to increase the YEAR-3 and YEAR-4 values of PETITIONER'S personal property to these amounts.

[38] Exhibits 22, 23, 24 and 25.

41. The RESPONDENT did submit a Review Appraisal of APPRAISER-1's YEAR-3 and YEAR-4 appraisals, which was prepared by APPRAISER-4, an independent appraiser with significant experience in appraising property for property tax purposes.[39] APPRAISER-4 concluded that APPRAISER-1's appraisals have "not demonstrated that the Rule's schedules do not result in the fair market value of the subject property" and that the Tax Commission "should uphold the value established by the Rule's schedules for the subject property."[40] APPRAISER-4, however, did not prepare an appraisal or give an opinion of value, other than revising APPRAISER-1's income approach and arriving at different income approach values for YEAR-1 and YEAR-2 (which will be discussed in more detail later).

42. PETITIONER also submitted a "critique" of the audit report that APPRAISER-3 prepared and with which the County assessed PETITIONER'S personal property for YEAR-1 and YEAR-2. This critique was prepared by APPRAISER-2, who is a licensed public engineer, a member of the American Society of Appraisers, and a Certified Member of the Institute for Professionals in Taxation. In his report, APPRAISER-2 acknowledged that the INTERVENER applied the percent good schedules that are found in Rule 33 to estimate the value of PETITIONER'S personal property with a cost approach. However, he concluded that the INTERVENER'S cost approach failed to consider functional and external obsolescence and criticized the INTERVENER for not considering or developing an income or sales comparison approach to test the reasonableness of its cost approach. APPRAISER-2 concluded that "the INTERVENER'S audit report applied fundamentally flawed appraisal techniques in developing the cost approach to value, and as a result, their determined fair market value opinions are not credible and are improper and excessive."[41]

43. APPRAISER-2 compared eight historical FACILITY sales to determine whether the percentage of depreciation taken by Rule 33 was consistent with market information. APPRAISER-2 determined ratios for the sold FACILITIES' replacement costs new to their sales prices. The ratios ranged from %%% to %%%. He concluded that the INTERVENER'S audited values were too high because they

[39] Exhibit 35.
[40] Exhibit 35, p. 80.
[41] Exhibit 21, pp. 6-11.

are %%% of replacement cost new for YEAR-1 and %%% for YEAR-2. The eight sales APPRAISER-2 used for his analysis were for FACILITIES located throughout the United States (but none in the XXXXX area of the country).[42]

44. APPRAISER-1 prepared appraisals for the PETITIONER'S FACILITY for each tax year. He mainly discussed the YEAR-3 appraisal report at hearing. For purposes of clarity, the findings mainly focus on the YEAR-3 report (Exhibit 24). Unless specifically stated otherwise, it should be assumed that the methodology discussed for the YEAR-3 report was applied in similar manner to the other reports.

45. APPRAISER-1 did not review Rule 33 or use it in preparing his appraisals. In addition, APPRAISER-1 did not individually value each item of personal property assessed by RESPONDENT, but rather prepared a unitary valuation of the PETITIONER'S FACILITY and made deductions for exempt property and property taxed elsewhere to estimate the value of PETITIONER'S personal property. To value the PETITIONER'S FACILITY, APPRAISER-1 prepared three indicators of value: 1) an income approach; 2) a sales comparison approach; and 3) a cost approach.[43]

46. In his appraisal, APPRAISER-1 disclosed that his "appraisal report is subject to the extraordinary assumption that the FACILITY is operated on a stand-alone basis, separate from the synergies and enhancements provided by PETITIONER'S other FACILITIES and XXXXX interests."[44]

47. APPRAISER-4 stated that APPRAISER-1 has improperly valued the PETITIONER'S FACILITY on a stand-alone basis and that the PETITIONER'S FACILITY 'S value should reflect the fact that it is part of a large XXXXX company. APPRAISER-4 indicates that he does not think that the PETITIONER'S FACILITY could compete as a stand-alone facility. APPRAISER-4 indicates that "[t]he current facility takes advantage of economies of scale and synergies that are a part of its current use" and

---

[42] Exhibit 21, p. 10 and at exhibits A and B. It is also noted that seven of the eight sales used by APPRAISER-2 used in his analysis were also sales that APPRAISER-1 used in the sales comparison approach in his appraisals. Exhibit 24, at exhibit 3-A. It is interesting that APPRAISER-2 reported different sales prices for his comparables than reported by APPRAISER-1. For one comparable, APPRAISER-2 reported a sales price that was more than double the sales price reported by APPRAISER-1. For another comparable, however, APPRAISER-1 reported a sales price that was more than three times the sales price reported by APPRAISER-2.

[43] Exhibit 24.

[44] Exhibit 24, p. 7.

that "[t]his allows the facility to achieve its most productive and profitable use." As a result, APPRAISER-4 concludes that APPRAISER-1's "extraordinary assumption has prevented APPRAISER-1 COMPANY from determining the fair market value of the subject property."[45]

48. The RESPONDENT contends that APPRAISER-4's conclusions are supported by PETITIONER'S own documents, in which it stated that the "PETITIONER'S FACILITY is an asset that has integration value with XXXXX in XXXXX and the XXXXX, and XXXXX, and XXXXX assets in the XXXXX region and the XXXXX."[46]

49. As will be explained in more detail later, the RESPONDENT contends that the extraordinary assumption made by APPRAISER-1 resulted in a number of "methodological errors," including the incorrect choice of guideline companies to prepare a cost of capital, the improper addition of a small firm risk premium to his cost of equity, and the reliance on a sales comparison approach based solely on sales of independent FACILITIES.

50. APPRAISER-1 testified that when he values a FACILITY for property tax appeal purposes, it is always going to be on a stand-alone basis so that assets outside the FACILITY do not contribute or denigrate value. He also testified that if his extraordinary assumption is false, he would possible need to make some changes to his appraisal. APPRAISER-1 indicated that besides appraisals prepared for property tax appeal purposes, appraisals of FACILITIES can be performed for other purposes, such as to obtain insurable value, liquidation value, salvage value, or investment value. APPRAISER-1 explained that his approach might be different depending on the nature of the assignment and the level of value he was trying to estimate. For example, he stated that he might not use the sales comparison approach if he was trying to estimate a FACILITY'S investment value.

APPRAISER-1's Income Approach

51. APPRAISER-1 prepared a discounted cash flow ("DCF") analysis for each of the tax years at Issue. APPRAISER-1 adjusted the value obtained for the PETITIONER'S FACILITY with his DCF

[45] Exhibit 35, p. 54-57.
[46] Exhibit 29, p. XXXXX 000155.

model by subtracting working capital, intangible assets/goodwill, and land value to estimate a remainder value for PETITIONER'S personal property.[47] With this income approach, APPRAISER-1 estimated the following income approach values for PETITIONER'S personal property: 1) $$$$$ for YEAR-1; 2) $$$$$ for YEAR-2; 3) $$$$$ for YEAR-3; and 4) $$$$$ for YEAR-4.[48]

52. Deduction for Intangible Assets/Goodwill. The RESPONDENT criticized the deduction for intangible assets/goodwill that APPRAISER-1 made to his DCF value to derive a remainder value for the personal property. APPRAISER-1 estimated that %%% of the PETITIONER'S FACILITY'S business enterprise value should be deducted as an estimate for any intangible assets or goodwil1.[49] The RESPONDENT indicates that the income indicator values appear well below book value and, thus, would result in no accounting goodwill. In addition, APPRAISER-4 criticizes the deduction because there is no information in APPRAISER-1's appraisal that describes what assets are included in the %%% deduction or whether this %%% estimate meets the criteria outlined in Utah statutes to qualify for an exemption from property taxes. APPRAISER-4 contends that the deduction is improper without any effort being made to show that it complies with the exemption statutes.[50] For these reasons, the RESPONDENT contends that APPRAISER-1's rule-of-thumb estimate for intangible assets/goodwill should not be allowed as a deduction.

53. Based on the foregoing, APPRAISER-1's use of a %%% estimate for deducting intangible assets/goodwill is suspect. PETITIONER has not shown that %%% of the PETITIONER'S FACILITY'S value is intangible property that is exempt from property taxation under Section 59-2-102(20)(a). Accordingly, the %%% deduction for intangible assets/goodwill that APPRAISER-1 applied to the

---

[47] For example, for the YEAR-3 tax year, APPRAISER-1 derived a DCF income approach value of approximately $$$$$ for the PETITIONER'S FACILITY, then deducted $$$$$ for working capital, $$$$$ for intangible assets/goodwill, and $$$$$ for land to derive a remainder value of $$$$$ for the personal property. Exhibit 24, p. 83.
[48] Exhibits 22, 23, 24 and 25.
[49] Exhibit 24, p. 79.
[50] Exhibit 35, pp. 71-72, where APPRAISER-4 points out that Utah Code Ann. §59-2-102(20) (2009) defines intangible property, which is not subject to Utah property taxation, as "property that is capable of private ownership separate from tangible property" and "goodwill."

PETITIONER'S FACILITY'S value to derive the value of PETITIONER'S personal property should be disallowed.

54. Pre-Tax DCF Method. APPRAISER-1 performed his DCF analysis on a pre-tax basis.[51] APPRAISER-4 criticized APPRAISER-1's pre-tax analysis because it ignores an obvious benefit that PETITIONER'S recent capital expenditures (in the $$$$$ of dollars) have on its "real-world" cash flows, specifically that the depreciation on these expenditures are tax deductible. APPRAISER-4 points out that the additional depreciation that PETITIONER is incurring as a result of these expenditures is enhancing its cash flows and that the use of pre-tax discounting will not allow an appraiser to measure the positive benefits of these expenditures. APPRAISER-4 also indicates that a reputable text on corporate valuation points out that "You cannot simply gross up the discount rate to a pre-tax rate and discount the pre-tax cash flow and get the same result as the recommended approach. It is virtually impossible to perform a real-world discounted cash flow analysis using the pre-tax approach."[52] APPRAISER-4 also stated that he is unaware of any centrally-assessed case where the Commission has used the pre-tax method in recent years. For these reasons, the RESPONDENT asks the Commission to reject APPRAISER-1's pre-tax DCF model.

55. Based on the foregoing, APPRAISER-1's pre-tax DCF models are suspect. PETITIONER has not shown that the use of these pre-tax models produces accurate values for the PETITIONER'S FACILITY and, after subtractions, accurate values for its personal property.

56. Weighted Average Cost of Capital ("WACC") and Size Premium. APPRAISER-1 derived after-tax WACC's (and equivalent pre-tax WACC's) in his appraisals.[53] For example, for YEAR-3, he calculated an after-tax WACC of %%% (before the property tax adjustment), which equates to a pre-tax WACC of %%% (before the property tax adjustment). In determining these rates, APPRAISER-1 chose guideline companies appropriate for a property operated on a stand-alone basis. In

[51] Exhibit 24, p.75.
[52] Exhibit 35, pp. 70-71, citing *Valuation, Measuring and Managing the Value of Companies*, John Wiley & Sons, New York (2000), p. 153.
[53] Exhibits 22, 23, 24 and 25.

addition, APPRAISER-1 added a small-firm risk premium (or "size premium") to his cost of equity, which for the YEAR-3 year was %%%.[54]

57. APPRAISER-4 also calculated WACC's that he believed to be more appropriate for each year at issue.[55] For example, for YEAR-3, he calculated an after-tax WACC of %%% (before the property tax adjustment), which equates to a pre-tax WACC of %%% (before the property tax adjustment). In determining these rates, APPRAISER-4 chose guideline companies that were primarily XXXXX companies, which were all, or mostly, different from those used by APPRAISER-1. In addition, APPRAISER-4 did not add a size premium to his cost of equity.[56]

58. APPRAISER-4 indicated that he had two problems with APPRAISER-1's determination of a WACC and that the problems are related to one another, specifically: 1) APPRAISER-1's appraisal is subject to an extraordinary assumption that the subject property is operated on a stand-alone basis; and 2) APPRAISER-1 adds a "small stock premium" (or size premium) to his cost of equity estimate.[57] APPRAISER-4 stated that he believes that the XXXXX companies he chose in developing a WACC are better guideline companies with which to derive a WACC for PETITIONER because the subject PETITIONER'S FACILITY is affected by the same general economic and business conditions that affect these generally larger companies.[58] But, APPRAISER-4 recognized that the major difference between his and APPRAISER-1's estimates of an after-tax WACC for PETITIONER is related to APPRAISER-1's decision to adjust his cost of equity by a size premium.[59]

59. Size Premium. APPRAISER-1 obtained the %%% size premium that he added to his YEAR-3 cost of equity using data from Ibbotson Associates, Stock Bonds Bills and Inflation, YEAR-3 Yearbook. APPRAISER-1 indicated that the %%% size premium was associated with companies in the

[54] Exhibit 24, pp. 82-83 & at exhibit 4-G.
[55] Exhibit 35, at exhibits 5 and 5a (for YEAR-3 and YEAR-4); Exhibit 56 (for YEAR-1 and YEAR-2).
[56] Exhibit 35, at exhibits 5 & 5a.
[57] Exhibit 35, p. 54.
[58] Exhibit 35, p. 59.
[59] Exhibit 35, p. 70.

10th Decile.[60] The RESPONDENT contends that the size premium is so large because it was chosen from the smallest deciles reported by Ibbotson based upon capitalization. For the four years at issue, the size premiums APPRAISER-1 added to his costs of equity ranged between %%% and %%%.[61]

60. APPRAISER-4 stated that adding a size premium to the traditional CAPM (capital asset pricing model) cost of equity approach used by APPRAISER-1 is not found in any corporate finance text.[62] He also criticized the addition of a size premium because PETITIONER would not be a willing seller at the lower price obtained with a size premium and because the size premium is in conflict with the PETITIONER'S FACILITY'S current use as part of an XXXXX company. APPRAISER-4 explains that the highest and best use of the PETITIONER'S FACILITY is to be a part of a large diversified company, which it is. He also explains that even if consideration of a size premium were appropriate, PARENT COMPANY'S market capitalization is close to $$$$$, and it would be considered a large cap company for which no size premium adjustment would be required.[63]

61. APPRAISER-4 further explains that APPRAISER-1's size premium is inappropriate because his data source for the adjustment (the Ibbotson's Yearbook) does not break the information down by industry class, which is contrary to the basic valuation principles that provide for discount rates to be derived from guideline companies in the same industry class.[64]

62. APPRAISER-4 also explained that in recent years, the database that Ibbotson relies upon to calculate the expected size adjustments has come under severe criticism by academics as to whether it contains bias and inaccuracies. He explains that many studies have been written that dispute the existence of the size premium. He cited several of the criticisms concerning the size effect adjustment, including the "delisting bias," the "January effect," and the effect of transaction costs. He also explained that the Ibbotson database includes securities from 1926 to the present and that if one, instead, studies the period of 1982 - 1996 (which resolved the delisting bias), the small firm premium disappears and actually reverses and

[60] Exhibit 24, p. 82.
[61] Exhibits 22, 23, 24 and 25.
[62] Exhibit 35, p. 30.
[63] Exhibit 35, p. 56.
[64] Exhibit 35, p. 55.

becomes a large firm premium. He asserts that this makes sense because if the small firm premium actually existed, shareholders would be demanding that large firms be broken up into smaller firms so that shareholders could experience the larger returns.[65]

63. PETITIONER has not shown that a size premium should be added to the cost of equity to value PETITIONER'S FACILITY and its personal property for any of the years at issue. APPRAISER-1's addition of a size premium to his cost of equity calculation is inappropriate, and the WACC determined by APPRAISER-4 for each year is more convincing.

64. APPRAISER-4's Adjustments to APPRAISER-1's Income Approach. APPRAISER-4 prepared an income approach value for PETITIONER'S personal property for YEAR-3 and YEAR-4 by using APPRAISER-1's DCF models and making the following changes to them: 1) he changed them to after-tax models by using depreciation information provided by PETITIONER; 2) he eliminated the %%% deduction for intangible assets/goodwill; and 3) he substituted the lower WACC's that he had calculated and that did not include a size premium. With this methodology, APPRAISER-4 derived DCF income approach values for PETITIONER'S personal property of approximately $$$$$ for YEAR-3 and $$$$$ for YEAR-4.[66]

65. The three changes that APPRAISER-4 made to APPRAISER-1's DCF model are appropriate. These changes result in an income approach value for PETITIONER'S personal property of approximately $$$$$ for YEAR-3, in comparison to the $$$$$ income approach value derived by APPRAISER-1 for this year. Similarly, the changes result in an income approach value of approximately $$$$$ for YEAR-4, in comparison to the $$$$$ value derived by APPRAISER-1 for this year. APPRAISER-4 has shown that these changes have a substantial impact on the income approach values that APPRAISER-1 derived with this DCF model. Accordingly, it is reasonable to assume that similar changes would also have a significant impact on the income approach values APPRAISER-1 derived for YEAR-1

[65] Exhibit 35, pp. 56-57.
[66] Exhibit 41.

and YEAR-2. For these reasons, the income approach values that APPRAISER-1 derived for all years at issue are not convincing.

66. The Commission also notes that the income approach values derived by APPRAISER-4 for YEAR-3 and YEAR-4, once he made appropriate changes to APPRAISER-1's DCF models, tend to support the values that the County BOE sustained at the local level. For YEAR-3, APPRAISER-4's $$$$$ income approach value is about %%% lower than the $$$$$ value sustained by the County BOE. For YEAR-4, APPRAISER-4's $$$$$ income approach value is about %%% higher than the $$$$$ value sustained by the County BOE. Overall, APPRAISER-4's income approach values support the values sustained by the County BOE.

APPRAISER-1's Sales Comparison Approach

67. APPRAISER-1 adjusted a number of comparables sales of FACILITIES to estimate a sales comparison approach value for PETITIONER'S personal property for each year at issue, as follows: 1) $$$$$ for YEAR-1; 2) $$$$$ for YEAR-2; 3) $$$$$ for YEAR-3; and 4) $$$$$ for YEAR-4.[67]

68. Again, APPRAISER-1 focused most of his discussion at hearing on the sales used in his YEAR-3 appraisal. For the YEAR-3 appraisal, the seven comparables he used sold between July XXXXX and March YEAR-3 for "prices" ranging between $$$$$ and $$$$$. [68] The original construction dates of the comparables ranged between XXXXX and XXXXX. Whereas the "effective age" of the subject property is ##### years old, the effective ages were ##### years for four of the comparables, ##### years for two of them, and ##### years for one of them. Whereas the "size" of the subject property is XXXXX (XXXXX), the sizes of the comparables ranged between XXXXX and XXXXX. Two of the comparables are located in STATE-1, and the other five are located in STATE-2, STATE-3, STATE-4, STATE-5, and STATE-6. APPRAISER-1 took the FACILITY sales prices he derived and made adjustments to compare

[67] Exhibits 22, 23,24 and 25.

[68] Most, if not all, of the comparables did not actually sell for the "FACILITY sales prices" APPRAISER-1 used in his analysis. APPRAISER-1 derived these sales prices by making various adjustments to the often complicated transactions through which the FACILITIES were sold.

the comparables to the subject property. After these adjustments, APPRAISER-1 arrived at adjusted sales prices ranging between $$$$$ and $$$$$.[69]

69. APPRAISER-1 explained that with more complex property such as a FACILITY, the assets sold represent not only real estate, but also personal property, a trained and assembled workforce, contracts and agreements, and other intangible assets that comprise a going concern or business enterprise. He further explained that FACILITIES are often sold with marketing assets, XXXXX, and XXXXX which must be allocated out of the reported sales prices to represent only the price of the assets being appraised. Accordingly, APPRAISER-1 first analyzed and isolated the sales price to only include FACILITY assets and any deferred maintenance costs needed to bring the comparable FACILITIES back to a "going concern" operation. As a result, he excluded items such as XXXXX, XXXXX and XXXXX outside the FACILITY operations, XXXXX, and working capital costs from the comparables sales' prices. He also deducted intangibles, which for the most part he assumed to be %%% of the adjusted sales price.[70]

70. To these allocated FACILITY sales prices, APPRAISER-1 made the additional adjustments for differences between the FACILITIES, specifically: 1) a size adjustment determined by dividing the XXXXX of PETITIONER'S FACILITY by the XXXXX of the comparables; 2) a XXXXX adjustment determined by dividing the XXXXX of PETITIONER'S FACILITY by the XXXXX of the comparable sales (based on COMMON MEASUREMENT ("COMMON MEASUREMENT")); 3) an adjustment for market conditions (based upon the level of economic obsolescence); and 4) an adjustment for effective age. No adjustment was made for location.[71]

71. After adjustments, APPRAISER-1 derived adjusted sales prices for the comparables that equated to COMMON MEASUREMENT's ranging between $$$$$ and $$$$$ per COMMON MEASUREMENT, with a median and mean of $$$$$ per COMMON MEASUREMENT. Based on this information, APPRAISER-1 estimated the subject's value to be $$$$$, or approximately $$$$$ per

[69] Exhibit 24, at exhibit 3-A.
[70] Exhibit 24, pp. 62, 65.
[71] Exhibit 24, pp. 62-64, exhibit 3-A.

COMMON MEASUREMENT. After subtracting for land, APPRAISER-1's final sales comparison approach value for PETITIONER'S personal property is $$$$$ for YEAR-3.[72]

72. APPRAISER-4 found APPRAISER-1's sales comparison approach to be unreliable primarily because of his use of arbitrary and unsubstantiated adjustments, assumptions and variables that compound upon themselves to ultimately create a very unreliable result. He also criticized APPRAISER-1's undocumented and unsubstantiated assumption that the sales prices contain %%% for intangibles. APPRAISER-4 further addressed each comparable APPRAISER-1 used and determined that many of the properties were not comparable and that many of the sales were not made by willing sellers because the sellers were exiting the business or did not desire or have the ability to make necessary capital improvements. APPRAISER-4 also stated that APPRAISER-1's sales comparison approach was unreliable because of the subjective nature and magnitude of many of the adjustments and because much of the consideration paid for the comparable properties was uncertain and unquantifiable.[73]

73. The RESPONDENT also contends that the comparables used by APPRAISER-1 are not comparable to PETITIONER'S FACILITY because of differences in effective age. The RESPONDENT points out that APPRAISER-1 indicates that the average weighted physical life of assets at an XXXXX FACILITY is ##### years and that the effective age of PETITIONER'S FACILITY is ##### years.[74] The RESPONDENT also points out that PETITIONER'S WITNESS 2 testified that a FACILITY makes improvements so that its effective age never goes beyond %%%. Moreover, the RESPONDENT points out that PETITIONER has not let the effective age of its PETITIONER'S FACILITY go beyond %%% because its effective age of ##### years equates to %%% of its average expected life of ##### years.

74. The RESPONDENT points out that in contrast, APPRAISER-1's comparables exceed this %%% threshold of economic life. In fact, for YEAR-3, four of his seven comparables have an effective age of ##### years, which would equate or %%% of their expected lives (based on a #####-year life) and well beyond the %%% threshold. Two of the remaining three comparables have an effective age of #####,

[72] Exhibit 24, p. 73.
[73] Exhibit 35, p. 74-77.
[74] Exhibit 24, p. 64.

or %%% of their expected lives, which is also beyond the %%% threshold. The final comparable has an average age of #####, or %%%, which .is slightly beyond the %%% threshold.[75] The RESPONDENT also pointed out that the 11 comparables APPRAISER-1 used for YEAR-4 also have effective ages ranging between ##### and ##### years, which also exceed the %%% threshold.[76] The RESPONDENT indicates that APPRAISER-1 made pro rata adjustments for the age differences,[77] but that he offers no analysis to show whether his adjustments equal the amounts of capital expenditures that would be required to make the comparable FACILITIES equal to PETITIONER.

75. APPRAISER-4 also had additional criticisms of the seven comparable sales used by APPRAISER-1 for YEAR-3, as summarized below:[78]

1) STATE-2 FACILITY Sold by COMPANY-A. APPRAISER-4 contends that COMPANY-A may not be a willing seller because it had chosen to exit the FACILITY business. He also indicates that the sales price adjusted by APPRAISER-1 is suspect because the sale included a potential participation payment of up to $$$$$, but APPRAISER-1 only added $$$$$ to the sales prices for this payment after making assumptions that there would be a %%% probability that the payment would be paid, that it would be paid out over ##### years, and that the discount rate would be %%%. APPRAISER-4 also objected to APPRAISER-1's deduction of over $$$$$ for intangibles. He also notes that APPRAISER-1's adjusted sales price for this comparable is suspect because the sum total (up and down) of all the percentage adjustments (excluding intangibles) was %%%.

2) STATE-3 FACILITY Sold by COMPANY-B. In addition to the concern about the $$$$$ deduction for intangibles, APPRAISER-4 finds the adjusted sales price suspect because the sum total (up and down) of all the percentage adjustments (excluding intangibles) was %%%. It is also noted that APPRAISER-1 determined a FACILITY sales price of $$$$$ for this comparable,

[75] Exhibit 24, at exhibit 3-A.
[76] Exhibit 25, at exhibit 3-A.
[77] Exhibit 24, p. 64.
[78] Exhibit 35, pp. 74-77.

whereas APPRAISER-2 used a sales price of $$$$$ for this comparable in his analysis. Furthermore, it is noted that APPRAISER-1 determined that this comparables size was only XXXXX, whereas APPRAISER-2 showed its size to be XXXXX. [79] Regardless of which size is correct, this FACILITY is approximately four times the size of PETITIONER'S FACILITY.

3) STATE-4 FACILITY Sold by COMPANY-C. APPRAISER-4 notes that COMPANY-C had chosen to spin off its FACILITY business.[80] He also noted that the FACILITY sales price is difficult to determine because the total sales price was $$$$$ and included a XXXXX, ##### COMPANY-D XXXXX and franchises, COMPANY-E, and an interest in a XXXXX. Furthermore, he contends that the FACILITY sales price is difficult to determine because of a participation agreement for an additional $$$$$ depending on the future financial performance of the FACILITY. APPRAISER-4's observation is supported because it appears that APPRAISER-1 determined a FACILITY sales price for this comparable of approximately $$$$$,[81] whereas APPRAISER-2 used a sales price of $$$$$ in his analysis.[82] In addition, APPRAISER-4 finds APPRAISER-1's adjusted sales price suspect because the sum total (up and down) of all the percentage adjustments (excluding intangibles) was %%%.

4) STATE-5 FACILITY Sold by COMPANY-B. In November YEAR-1, COMPANY-B closed this FACILITY after failing to find a buyer. In June YEAR-2, however, COMPANY-B sold the FACILITY in a deal that included a XXXXX. After determining an allocated sales price, APPRAISER-1 adjusted it up by $$$$$ as an estimate of the cost needed to completely refurbish and restart the closed FACILITY.[83] As a result, APPRAISER-1 used a FACILITY sales price of $$$$$ in his analysis. In comparison, APPRAISER-2 did not adjust the sales price up and reflected a sales price of $$$$$ in his analysis.[84] APPRAISER-4 also found the adjusted sales

[79] Exhibit 24, at exhibit 3-A; Exhibit 21, p. 10.
[80] Exhibit 24, p. 37.
[81] Exhibit 24, at exhibit 3-A.
[82] Exhibit 21, p. 10.
[83] Exhibit 24, p. 68.
[84] Exhibit 21, p. 10.

price suspect because the sum total (up and down) of all the percentage adjustments (excluding intangibles) was %%%. Furthermore, it is noted that capacity of this comparable, which is #####, is %%% percent greater than the subject's #####.

5) STATE-1 FACILITY Sold by COMPANY-F. Again, APPRAISER-4 contends that the intangible property deduction APPRAISER-1 made has not been supported. APPRAISER-4 also found the adjusted sales price suspect because the sum total (up and down) of all the percentage adjustments (excluding intangibles) was %%%. It is noted that APPRAISER-1 determined that this comparables capacity was only #####, whereas APPRAISER-2 showed its capacity to be #####.[85]

6) STATE-1 FACILITY Sold by COMPANY-A. APPRAISER-4 indicated again that COMPANY-A had chosen to exit the FACILITY business, suggesting it was not a typical willing seller. APPRAISER-4 also pointed out that COMPANY-A had earlier decided to sell the FACILITY or convert it to a XXXXX after deciding to forgo spending $$$$$ to upgrade the plant.[86] APPRAISER-4 also points out that APPRAISER-1 used a "FACILITY sales price" of $$$$$ for this FACILITY, even though it sold for $$$$$. APPRAISER-1 increased the sales price to account for the $$$$$ in deferred maintenance that the buyer is projected to spend.[87] APPRAISER-2, however, used the $$$$$ sales price in his analysis.[88] Finally, APPRAISER-4 indicates that the adjusted sales price is suspect because the sum total (up and down) of all the percentage adjustments (excluding intangibles) was %%%.

7) STATE-6 FACILITY Sold by COMPANY-B. APPRAISER-4 contends that in addition to the payments considered by APPRAISER-1, the transaction included an "earn out provision" which was "hedged" to "lock-in" a value of approximately $$$$$.[89] APPRAISER-4 contends that APPRAISER-1 did not account for the value of this earn out provision in his FACILITY sales

[85] Exhibit 24, at exhibit 3-A; Exhibit 21, p. 10.
[86] Exhibit 59, p. 160.
[87] Exhibit 24, p. 69.
[88] Exhibit 21, p. 10.
[89] Exhibit 59, p. 159.

price. It is also noted that APPRAISER-2 used a $$$$$ sales price for the FACILITY in his analysis that is higher than the $$$$$ sales price derived by APPRAISER-1.[90] Furthermore, APPRAISER-4 indicates that the adjusted sales price is suspect because the sum total (up and down) of all the percentage adjustments (excluding intangibles) was %%%.

76. In his YEAR-4 appraisal, APPRAISER-1 compared the subject property to 11 comparables (which included the 7 comparables from the YEAR-3 appraisal that were discussed above). The four "new" comparables found in the YEAR-4 appraisal sold in YEAR-3 for "prices" ranging between $$$$$ and $$$$$.[91] The original construction dates of the comparables ranged between the DATE and DATE. Whereas the "effective age" of the subject property is XXXXX years old, the effective ages of three of the four new comparables was ##### years, and the fourth was ##### years. Whereas the "size" of the subject property is XXXXX, the sizes of the four new comparables ranged between XXXXX and XXXXX. The four new comparables are located in STATE-1, STATE-6, STATE-7, and STATE-8. APPRAISER-1 adjusted the sales prices of the 11 comparables to arrive at adjusted sales prices ranging between $$$$$ and $$$$$.[92]

77. After adjustments, APPRAISER-1 derived adjusted sales prices in the YEAR-4 appraisal for the comparables that equated to COMMON MEASUREMENT's ranging between $$$$$ and $$$$$ per COMMON MEASUREMENT, with a median and mean of $$$$$ per COMMON MEASUREMENT. Based on this information, APPRAISER-1 estimated the subject's YEAR-4 sales comparison approach value to be $$$$$, or approximately $$$$$ per COMMON MEASUREMENT. After subtracting for land, APPRAISER-1's final sales comparison approach value for PETITIONER'S personal property is $$$$$ for YEAR-4.[93]

---

[90] Exhibit 24, at exhibit 3-A; Exhibit 21, p. 10.
[91] Again, most, if not all, of the comparables did not actually sell for the "FACILITY sales prices" APPRAISER-1 used in his analysis. APPRAISER-1 derived these sales prices by making various adjustments to the often complicated transactions through which the FACILITIES were sold.
[92] Exhibit 25, at exhibit 3-A.
[93] Exhibit 25, p. 75.

78. In addition to criticisms already discussed, APPRAISER-4 also had additional criticisms of these four new comparables, as summarized below:[94]

1) STATE-1 FACILITY Sold by COMPANY-G. APPRAISER-4 finds the FACILITY sales price APPRAISER-1 used in his analysis to be suspect because he adjusted the $$$$$ sales price downward by %%% to arrive at the $$$$$ amount he allocated to the "stand-alone FACILITY."[95] APPRAISER-4 indicates that APPRAISER-1's standard %%% deduction for intangibles is unsupported and that the other %%% deduction is suspect because these "other assets" for which he adjusted are also not identified. Furthermore, APPRAISER-4 indicates that the adjusted sales price is suspect because the sum total (up and down) of all the percentage adjustments (excluding intangibles) was %%%.

2) STATE-6 FACILITY Sold by COMPANY-H. APPRAISER-4 indicates that COMPANY-H sold its FACILITY as part of its plans to exit the FACILITY business, which suggests that it is not a typical willing seller.[96] Moreover, APPRAISER-4 pointed out that the sale price was an allocated price because the sale included other assets and that the FACILITY sales price was a residual value after all other property had been valued. APPRAISER-4 also indicates that the adjusted sales price is suspect because the sum total (up and down) of all the percentage adjustments (excluding intangibles) was %%%.

3) STATE-7 FACILITY Sold by COMPANY-H. APPRAISER-4 indicates that COMPANY-H sold its FACILITY as part of its plans to exit the FACILITY business, which suggests that it is not a typical willing seller. In addition, APPRAISER-4 pointed out that the news release of the sale indicates that the FACILITY'S capacity is XXXXX and not the XXXXX used by APPRAISER-1 in his analysis.[97] In addition, APPRAISER-4 indicates that the adjusted sales

[94] Exhibit 35, pp. 78-79.
[95] Exhibit 25, pp. 65-66.
[96] Exhibit 59, p. 157.
[97] Exhibit 59, p. 156.

price is suspect because the sum total (up and down) of all the percentage adjustments (excluding intangibles) was %%%.

4) STATE-8 FACILITY Sold by COMPANY-I/COMPANY-J. APPRAISER-4 indicated that this sale concerned the purchase of a %%% in COMPANY-I, which was owned by COMPANY-J. As a result, the purchase price was grossed up to represent a %%% interest before being adjusted downward to account for three XXXXX, a XXXXX, and four XXXXX also owned by COMPANY-I. As a result, APPRAISER-4 contends that this transaction should never have been considered as a comparable. APPRAISER-4 also indicates that the adjusted sales price is suspect because the sum total (up and down) of all the percentage adjustments (excluding intangibles) was %%%.

79. Based on the foregoing, it is clear that sales of FACILITIES are complex transactions that often include other assets and contract provisions. As a result, it is difficult to allocate a portion of the transaction price to the FACILITY alone. This is evidenced by the fact that APPRAISER-1 and APPRAISER-2 used many of the same comparables in their analyses, yet derived different sales prices for many of these FACILITIES. In addition, APPRAISER-4 has provided information about the transactions and the difficulty with making adjustments to the transaction prices in order to arrive at the FACILITY sales price. There are too many variables to these transactions for the FACILITY sales prices that either APPRAISER-1 or APPRAISER-2 derived to be convincing. As a result, APPRAISER-1's sales comparison approach and APPRAISER-2's critique are both suspect and not convincing.

80. In addition, because of the many differences between FACILITIES, it is also difficult to adjust the FACILITY sales price, even if this price can be determined with reasonable certainty. Furthermore, some of the adjustments that APPRAISER-1 made are suspect. For example, APPRAISER-1's comparables all have effective ages that are higher than the subject property's effective age. Although APPRAISER-1 used a formula to adjust for effective age, it is not clear that this adjustment accounts for the capital expenditures that would need to be expended to make the comparables' effective

ages similar to the subject property's effective age. APPRAISER-1's adjustment for effective age may have been more convincing had he included comparable sales of FACILITIES that had effective ages equal to or lower than the subject's effective age in order to "bracket" the comparables. But, he did not.

81. It also appears that several of APPRAISER-1's (and APPRAISER-2's) comparables have problems that do not affect the subject property. At least one of the comparables was closed at the time of sale, and at least one more had significant amounts of deferred maintenance. In addition, several FACILITIES were sold by sellers exiting the FACILITY business. It is unknown whether such a seller is willing to sell a FACILITY at a lower price than a seller remaining in the FACILITY business. Regardless, the comparables that APPRAISER-1 chose to value PETITIONER'S FACILITY as a "stand-alone" FACILITY do not appear to be maintained as well as PETITIONER'S FACILITY, and it is unknown whether they are compliant with GOVERNMENT REQUIREMENT, which may affect value. In any case, APPRAISER-1's (and APPRAISER-2's) comparables, on the whole, appear to be inferior to subject property in the amounts of updates that have been expended on them. It is clear that they are inferior in effective age. Perhaps such comparables are more likely to be operated on a stand-alone basis and, thus, "match" APPRAISER-1's extraordinary assumption that PETITIONER'S FACILITY is operated on a stand-alone basis. But, PETITIONER'S FACILITY is not operated on a stand-alone basis. Accordingly, APPRAISER-1's sales comparison approaches are not convincing. Similarly, APPRAISER-2's critique is not convincing.

82. In conclusion, APPRAISER-1's sales comparison approaches do not show that the values established for PETITIONER'S personal property using the percent good tables on Rule 33 are incorrect. Similarly, APPRAISER-2's critique does not show that the values established for PETITIONER'S personal property using the percent good tables on Rule 33 are incorrect. Furthermore, the income approach values that APPRAISER-4 derived by making changes to APPRAISER-1's DCF models are also more convincing values than APPRAISER-1's sales comparison approach values.

APPRAISER-1's Cost Approach

83. APPRAISER-1 determined his cost approach values by estimating the replacement cost new ("RPLCN") of PETITIONER'S personal property and making adjustments to this amount. APPRAISER-1's cost approach estimates of value for each year are as follows: 1) $$$$$ for YEAR-1; 2) $$$$$ for YEAR-2; 3) $$$$$ for YEAR-3; and 4) $$$$$for YEAR-4.[98]

84. At the hearing, APPRAISER-1 again focused on the cost approach from his YEAR-3 appraisal. APPRAISER-1's YEAR-3 cost approach model is as follows:[99]

PETITIONER
Valuation of FACILITY Assets of PETITIONER'S FACILITY in XXXXX
Cost Approach Summary – PETITIONER
Valuation Date: January 1, YEAR-3
USD

Reproduction Cost New (RPDCN)		$$$$$
Less: Functional Obsolescence (Technological Advancement)		$$$$$
Equals: Replacement Cost New (RPLCN)		**$$$$$**
Less: Physical Deterioration (Incurable)	%%	$$$$$
Equals: RPLCN Less Physical Depreciation (RCNLD)		**$$$$$**
Less: Economic Obsolescence	%%	$$$$$
Equals: RCNLD Less Economic Obsolescence		**$$$$$**
Less: Functional Obsolescence (Incurable) – Inutility	%%	$$$$$
Less: Functional Obsolescence (Curable) – ITEM		$$$$$
Less: Functional Obsolescence (Incurable) – Energy/Labor		$$$$$
Equals: RCNLD Less Economic and Functional Obsolescence		**$$$$$**
Less: Necessary REGULATORY CapEx (Curable Obsolescence)		$$$$$
Equals: RCNLD Less All Economic & Functional Obsolescence		**$$$$$**
Plus: Land Value[1]		$$$$$
Equals: Total Full and True Value of the FACILITY		**$$$$$**
	Rounded	**$$$$$**

1. Land Value is the assessed value for land and is included here to be consistent with the other two approaches to value.

Source: XXXXX

85. The box marked near the top of the above model shows that APPRAISER-1 derived both a RPDCN (Reproduction Cost New) and a RPLCN (Replacement Cost New) for PETITIONER'S personal property. He identified the difference between these two amounts as functional obsolescence.

[98] Exhibits 22, 23, 24 and 25.
[99] Exhibit 24, at exhibit 5-A.

APPRAISER-1 calculated the RPDCN from the fixed asset listing using Marshall & Swift ("M&S") cost indexes for the XXXXX industry, but indicated that that the RPDCN could not be reasonably relied upon for the valuation. As a result, he "utilized the RPLCN as the starting point for [his] analysis."[100] APPRAISER-1 did not rely on historical costs, with which personal property is valued under Rule 33.

86. Replacement Cost New. APPRAISER-1 determined a RPLCN of $$$$$ to represent the cost of a new asset that has equivalent functional utility to PETITIONER'S FACILITY. APPRAISER-1 explained that he used RPLCN as the starting point for his analysis because a prudent purchaser would pay no more than the cost of acquiring an equally desirable substitute. APPRAISER-1 prepared his RPLCN by relying on data and studies performed by XXXXX ("XXXXX") in their XXXXX ("XXXXX") Report. In the XXXXX Report, current construction costs and operating characteristics are provided for each XXXXX and XXXXX property. Current construction costs were attributed to each major XXXXX or XXXXX to determine an overall RPLCN, with adjustments made to the costs for time, location, and capacity to reflect the assets at PETITIONER'S FACILITY.[101]

87. To adjust for time, APPRAISER-1 trended the XXXXX cost data forward from YEAR to the valuation date using M&S indexes. To adjust for location, a %%% increase (obtained from January YEAR-3 M&S local multipliers) was applied to the XXXXX cost data to account for the cost premium to construct in Utah. To adjust for capacity, cost-to-capacity adjustments were made to the XXXXX cost data to reflect the actual size of PETITIONER'S assets. APPRAISER-1 made additions for "indirect expenses" such as royalties, XXXXX and XXXXX, pre-start-up and startup expenses, and entrepreneur's profit. He estimated these expenses to be %%% of the total RPLCN for XXXXX and XXXXX. He also added interest costs that would be incurred to finance the construction of a large development assuming a five-year construction period. With this approach, he estimated the PETITIONER'S RPLCN to be $$$$$.[102]

---

[100] Exhibit 24, p. 88.
[101] Exhibit 24, p. 88.
[102] Exhibit 24, pp. 89-90.

88. The RESPONDENT believes that a RPLCN derived from YEAR data is suspect because there is an opportunity for error when trending values from YEAR forward to the lien dates. The RESPONDENT contends that this YEAR study has little relevance to the cost of actual replacements as of the lien dates at issue. Furthermore, the RESPONDENT indicates that the study is for a much larger FACILITY in a different location requiring subjective adjustments to arrive at replacement value for PETITIONER'S FACILITY.

89. The YEAR XXXXX study used by APPRAISER-1 estimated the construction costs of an XXXXX with a capacity of XXXXX in the XXXXX region. Cost was trended forward to the present tax years using M&S indexes. Then, the trended cost was reduced using a scaling factor of 0.7 to equate the cost of this much larger unit from the XXXXX study to the cost for the subject's unit, which is XXXXX. For the other different XXXXX, APPRAISER-1 used scaling factors ranging between 0.6 and 0.7.[103]

90. APPRAISER-4 indicates that APPRAISER-1's use of the YEAR costs for a much larger FACILITY (%%% the size of the subject property) is suspect because APPRAISER-1 does not include any documentation or substantiation as to where his scaling factors come from.[104] APPRAISER-4, relying upon an American Society of Appraisers ("ASA") treatise, explained that APPRAISER-1's use of the cost-of-capacity method as an estimation model is subject to significant error rates, particularly if differences in capacity between the two items are large. The treatise states: "The cost-to-capacity method must be used with caution. . . When large differences in capacity are being calculated, significant error can occur if such large differences are misapplied."[105] In addition, APPRAISER-4 indicates that an estimate of contingent costs must be a component when determining RPLCN and that contingent cost estimates could be as much as %%% of the estimate costs. He notes that APPRAISER-1 has not made any such estimate of contingent costs.[106]

---

[103] Exhibit 24, at exhibit 5-D.
[104] Exhibit 35, pp. 41-43.
[105] *Valuing Machinery and Equipment: The Fundamentals of Appraising Machinery and Technical Assets*, Second Edition, American Society of Appraisers, Washington, D.C. (2005), pages 61-65. Exhibit 57, p. 64.
[106] Exhibit 35, p. 41.

91. The RESPONDENT also raises a concern about the ratio APPRAISER-1 used to estimate the replacement cost of PETITIONER'S XXXXX property since PETITIONER'S XXXXX property is unique to its current use of the property. The RESPONDENT points out that APPRAISER-1 has estimated the replacement costs of PETITIONER'S XXXXX property, including the XXXXX that are present to benefit its interest in the XXXXX, with a ##### ratio of the processing property. In comparison, the RESPONDENT points out that APPRAISER-1 used a ratio of approximately ##### when he estimated the reproduction costs of PETITIONER'S XXXXX property.[107] The RESPONDENT contends that the use of the lower ratio for purposes of determining RPLCN may underestimate the value of PETITIONER'S XXXXX property and, thus, underestimate the value of PETITIONER'S personal property. PETITIONER has not adequately explained this difference.

92. While the RESPONDENT has not shown that APPRAISER-1's calculation of RPLCN is incorrect, it has raised concerns that suggest that the RPLCN number may not be reliable. The possibility for errors in calculating the RPLCN amount is present where the amount is produced by trending nearly XX-year indexes forward to the lien dates, then adjusting the trended costs down to estimate the value of a FACILITY approximately one-fifth the size in a different area of the country. In addition, other subjective adjustments are required concerning indirect costs and interest. Furthermore, the RESPONDENT has raised legitimate questions concerning APPRAISER-1's methodology to estimate the replacement cost new of PETITIONER'S significant XXXXX property. Based on the foregoing, there are questions as to whether the complex and often subjective calculations APPRAISER-1 used to calculate RPLCN are sufficiently reliable to use in a cost approach intended to contest values obtained under Rule 33.

93. Physical Deterioration. APPRAISER-1 determined that a deduction for physical deterioration must be made to RPLCN to reflect the physical deterioration inherent in PETITIONER'S FACILITY due to age and wear and tear. APPRAISER-1 determined that physical deterioration is %%% of RPLCN. The RESPONDENT did not dispute this deduction.

[107] Exhibit 24 (comparing exhibits 5-B and 5-C).

94. Other Forms of Obsolescence. After deducting depreciation associated with physical deterioration, APPRAISER-1 deducted other forms of depreciation, specifically: 1) economic obsolescence (incurable); 2) inutility (functional incurable); 3) ITEM (functional curable); 4) energy/labor (functional incurable); and 5) necessary REGULATORY expenditures (curable). The magnitude of these additional obsolescence deductions, when compared to APPRAISER-1's RPLCN less Physical Deterioration amounts, is substantial, as reflected in the following table:[108]

Year	RPLCN Less Physical Deterioration	Additional Economic and Functional Obsolescence	Add. Obsolescence as a % of RPLCN less Physical Deterioration
YEAR-1	$$$$$	$$$$$	%%
YEAR-2	$$$$$	$$$$$	%%
YEAR-3	$$$$$	$$$$$	%%
YEAR-4	$$$$$	$$$$$	%%

The RESPONDENT contests the additional economic and functional obsolescence deductions that APPRAISER-1 has taken in his cost approach.

95. Economic Obsolescence (Incurable). APPRAISER-1 calculated economic obsolescence as a percentage and deducted it before deducting the four other forms of depreciation. In YEAR-3, APPRAISER-1 determined that the economic obsolescence deduction should be %%%. In comparison, APPRAISER-1's percentage deduction for economic obsolescence was %%% for YEAR-1, %%% for YEAR-2, and %%% for YEAR-4. [109]

96. To quantify the magnitude of incurable economic obsolescence inherent in "an XXXXX FACILITY," APPRAISER-1 used three methodologies: 1) a return on capital analysis ("ROC"); 2) a price-to- book ratio analysis; and 3) a FACILITY margin analysis.[110] As a result, it appears that APPRAISER-1 was estimating economic obsolescence for FACILITIES in general, not specifically for PETITIONER'S FACILITY.

[108] Exhibits 22, 23, 24 and 25 (at exhibit 5-A).
[109] Exhibits 22, 23, 24 and 25 (at exhibit 5-A).
[110] Exhibit 24, p. 98.

97. *ROC Methodology.* APPRAISER-1 explained that the ROC analysis measures a company's earnings relative to the capital investment in the company. He reviewed the relationship between ROC for the year ending before each of the lien dates at issue to compare current returns to a period of time (YEAR to YEAR) when the financial performance of the FACILITY industry was considered to be more profitable. APPRAISER-1 compared the ROC's for these periods for nine competing SUBJECT COMPANIES (but not for PETITIONER) and calculated a ROC of %%% during YEAR through YEAR compared to a ROC of %%% for YEAR-2. Based on a comparison of these ROC's, he determined that the "economic penalty" that may be applied to PETITIONER'S FACILITY is %%% for YEAR-3. However, to buffer the effects of large swings, he also reviewed the ROC's for YEAR (%%%) and YEAR-1 (%%%) and determined that the mean ROC for YEAR through YEAR-2 was %%%. As a result, he concluded that the ROC methodology would indicate economic obsolescence of %%% for YEAR-3.[111]

98. *Price-to-Book Value Ratio Methodology.* APPRAISER-1 indicated that this method measures economic obsolescence by determining a ratio of stock prices to book value. He also indicated that lower price-to-book ratios indicate the existence of economic obsolescence. He determined that the stock price per book value for XXXXX SUBJECT COMPANIES was only %%% of the stock price per book value for companies in the S&P 500. Based on this comparison, APPRAISER-1 concluded that PETITIONER property was suffering from economic obsolescence of %%% (%%%) for YEAR-3.[112]

99. *FACILITY Margin Methodology.* APPRAISER-1 explained that this methodology directly compares current economic viability to a period of time when industry participants anticipated consistent economic profitability. APPRAISER-1 reviewed the relationship between the FACILITY margins (gross and cash operating margin) for the current year to average FACILITY margins during the years from YEAR to YEAR. From these margins, he concluded that for the YEAR-3 tax year, the

[111] Exhibit 24, at exhibit 6, pp. 1-2.
[112] Exhibit 24, at exhibit 6, pp. 2-3.

economic obsolescence during YEAR-2 was %%% on a cash operating basis and %%% on a gross basis.[113] In comparison, for the YEAR-4 tax year, APPRAISER-1 determined that margins had returned to a period of good economic profitability during YEAR-3 and that economic obsolescence, as shown by this method, would be non-existent (0%) for YEAR-4. [114]

100. After reviewing these methodologies, APPRAISER-1 concluded that the incurable economic obsolescence for YEAR-3 could be as high as %%%. He gave the ROC analysis little weight, however, because it is "skewed by a recent period of massive capital investment for expansion and REGULATORY purposes." He placed the most weight on the price-to-book value methodology and concluded that a %%% incurable economic obsolescence deduction would be appropriate.[115]

101. APPRAISER-4 considered all three of APPRAISER-1's analyses to be flawed. APPRAISER-4 stated that in his opinion, the most reliable way to demonstrate whether economic obsolescence exists is to perform a proper income approach to value.[116]

102. He also criticized APPRAISER-1's ROC and FACILITY Margin analyses because he compares recent earnings performances with the SUBJECT INDUSTRY'S earnings performances during YEAR -YEAR. APPRAISER-4 referred to this YEAR-YEAR period as "The Golden Era XXXXX," when the SUBJECT INDUSTRY'S earning performance was the best in their history. APPRAISER-4 contends that APPRAISER-1's premise is that if the SUBJECT INDUSTRY'S performance was less than its performance during its most productive period, then obsolescence is present. APPRAISER-4 contends that such a premise is flawed and that obsolescence is only present when a company's expected future earnings are less than a minimum expected return that a company needs to satisfy its investments goals. APPRAISER-4 also points out that if APPRAISER-1 had used PETITIONER'S own earnings and compared its gross margin for YEAR-2 ($$$$$) and YEAR-3 ($$$$$) with the SUBJECT INDUSTRY'S

[113] Exhibit 24, at exhibit 6, pp. 4-5.
[114] Exhibit 25, at exhibit 6, pp. 5-6.
[115] Exhibit 24, at exhibit 6, p. 6.
[116] Exhibit 35, p. 43.

gross margin during the YEAR-YEAR period ($$$$$), there would be no obsolescence from this measurement for any of the years in question.[117]

103. APPRAISER-4 acknowledged that APPRAISER-1 gave the most weight to his price-to-book methodology, but criticized APPRAISER-1's price-to-book analysis for a number of reasons. First, he claims that APPRAISER-1's use of the methodology results in a "mismatch" because book value is relevant when dealing with historical costs less depreciation, but not when adjusting replacement cost new less depreciation (as APPRAISER-1 has done). Second, APPRAISER-4 contends that APPRAISER-1's assumption that anything less than the S&P's price-to-book ratio constitutes obsolescence is a flawed premise. APPRAISER-4 contends that the S&P 500 companies are the largest and most successful companies in the equity market and that economic obsolescence does not necessarily exist if a price-to-book ratio is less than the S&P average. Third, he contends that APPRAISER-1's analysis is incomplete because it only examines equity and does not examine debt because a substantial amount of the capital investment in the FACILITY industry comes from debt. Fourth, APPRAISER-4 points out that APPRAISER-1's calculations for his selected SUBJECT COMPANIES show price-to-book ratios that are greater than 1.0, which suggests that no obsolescence exists in the industry (APPRAISER-4 explained that a price-to-book ratio of less than 1.0, but not greater than 1.0, might suggest the existence of economic obsolescence).[118]

104. In addition, APPRAISER-4 performed his own price-to-book analysis in which he considered large XXXXX companies in the XXXXX industry and calculated a price-to-book ratio for both their publically traded stock and debt securities. He determined that the overall price-to-book ratio for these guideline companies was ##### on January 1, YEAR-3 and ##### on January 1, YEAR-4. APPRAISER-4 contends that because these ratios are greater than one, the market perceives no economic obsolescence for the FACILITY industry or for subject property.[119]

---

[117] Exhibit 35, pp. 43-44.
[118] Exhibit 35, pp. 44-45.
[119] Exhibit 35, p. 45.

105. Furthermore, APPRAISER-4 contends that were one to assume that some economic obsolescence does exists with the subject property, the manner by which APPRAISER-1 applied it within his cost approach is incorrect and contrary to appraisal principles. APPRAISER-4 contends there is a specific sequence as to how obsolescence should be deducted from RPLCN, as discussed in ASA's treatise *Valuing Machinery and Equipment* (pp. 110-112).[120] APPRAISER-4 indicated that the treatise provides for economic obsolescence to be subtracted after the subtractions for functional obsolescence are made, whereas APPRAISER-1 has done the opposite. APPRAISER-4 explains that APPRAISER-1's adjustment for economic obsolescence is based on the premise that the earnings capabilities of the subject property are hampered. Because the poor earning capability may have resulted from the functional defects for which APPRAISER-1 has also made adjustments, any deduction for economic obsolescence should be calculated on the cost that remains after adjustments for the functional obsolescence are made. Otherwise, APPRAISER-4 contends that some of the obsolescence may be "double-counted." APPRAISER-4 asserts that even if one accepts APPRAISER-1's economic obsolescence percentages, this "sequencing" error overstates APPRAISER-1's economic obsolescence by $$$$$ for YEAR-3 and $$$$$ for YEAR-4.[121]

106. Based on the foregoing, there is a serious concern whether any incurable economic obsolescence actually existed for the subject property for the years at issue. APPRAISER-4's argument that an industry's period of best earnings performances should not be used as the basis of determining economic obsolescence is convincing. Furthermore, APPRAISER-4 has demonstrated that the results will be significantly different if PETITIONER'S own earnings are considered instead of the companies on which APPRAISER-1 relied. In addition, APPRAISER-4 has shown that APPRAISER-1's price-to-book analysis is suspect and that an analysis that considers both the equity and debt securities of large XXXXX companies may show that no economic obsolescence exists for YEAR-3 and YEAR-4. APPRAISER-4 also showed that the manner in which APPRAISER-1 sequenced his economic obsolescence adjustment is most probably incorrect. For these reasons, APPRAISER-1's deductions for incurable economic

[120] Exhibit 57. The treatise explains that "economic obsolescence is usually the last element of depreciation to affect the property (p. 112). See also Exhibit 63.
[121] Exhibit 35, pp. 45-48.

obsolescence are suspect and are not sufficiently reliable to use in a cost approach intended to contest values obtained under Rule 33.

107. Functional Obsolescence (Incurable)- Inutility. For YEAR-3, APPRAISER-1 determined that a %%% deduction should be applied to account for functional obsolescence (incurable)- inutility.[122] APPRAISER-1 explained that the cost approach should reflect that the subject PETITIONER'S FACILITY operates at less than its ##### capacity. APPRAISER-1 states that although the XXXXX is designed to run at #####, the PETITIONER'S FACILITY is impaired by XXXXX constraints that typically operate at only %%% to %%% of design capacity. Based on an COMMON MEASUREMENT, APPRAISER-1 determined that the PETITIONER'S FACILITY only operated at %%% utilization during YEAR-2. Using a scale factor of 0.7 and comparing PETITIONER'S actual capacity to %%% capacity, APPRAISER-1 estimated incurable functional obsolescence due to utilization to be %%%.[123]

108. APPRAISER-4 had several criticisms of APPRAISER-1's application of the inutility method. First, APPRAISER-4 contends that the inutility deduction duplicates the economic obsolescence deduction.[124] APPRAISER-4 again refers the Commission to the ASA treatise *Valuing Machinery and Equipment*, which indicates that "a penalty for inutility can be a measure of the loss in value from this form of economic obsolescence."[125] At first glance, it appears that APPRAISER-1's adjustment for inutility may be a duplicate deduction because he has already deducted economic obsolescence. However, later in the treatise, it also indicates that the inutility method "applies to both functional and economic penalties."[126] It appears that the inutility deduction is economic obsolescence when a FACILITY is operating at less than "rated or design capacity" because of demand, but may be functional obsolescence when a FACILITY is operating at less than rated or design capacity because of problems with the equipment itself. If

[122] Exhibit 24, at exhibit 5-A.
[123] Exhibit 24, p. 93. APPRAISER-1 also calculated obsolescence due to utilization to be %%% for all other years at issue after determining that the PETITIONER'S FACILITY operated between %%% and %%% for the relevant years. Exhibits 22, 23, 24 and 25.
[124] Exhibit 35, pp. 48-53.
[125] Exhibit 57, p. 97.
[126] Exhibit 57, p. 98.

APPRAISER-1's inutility deduction only measures functional obsolescence, then it may be appropriate to make some deduction for inutility.

109. APPRAISER-1 has shown that the PETITIONER'S FACILITY, as a whole, operated during the relevant years at a utilization rate that fluctuated between %%% and %%%, based on a measurement of COMMON MEASUREMENT'S. There was a discussion that the plant could never operate at %%% of capacity because of equipment mismatches. PETITIONER'S WITNESS 1, facility plant manager at PETITIONER'S FACILITY, testified that all FACILITIES have underutilization because of equipment mismatches and that rebuilding a new FACILITY would not eliminate inefficiencies. As a result, there may be some functional inutility because PETITIONER'S FACILITY, even if rebuilt, could never be utilized at %%%. In addition, it appears that part of APPRAISER-1's inutility deduction may be economic obsolescence due to demand because he stated in his appraisal that "FACILITY utilization averaged around %%% from YEAR through YEAR, but dropped to around %%% in YEAR-1 and %%% in YEAR-2, reflecting reduced global demand."[127] As a result, APPRAISER-1's inutility deduction for incurable functional obsolescence is suspect.

110. Furthermore, there is some question as to whether an inutility deduction for functional obsolescence always exists if a FACILITY'S equipment cannot be operated at %%% of capacity. APPRAISER-4 points out that no FACILITY can be operated at %%% of capacity all of the time because of seasonal fluctuations, scheduled downtime for maintenance, and a myriad of other circumstances.[128] APPRAISER-4's observations are supported by PETITIONER'S WITNESS 1's testimony that all FACILITIES have underutilization.

111. In addition, APPRAISER-4 disagrees with APPRAISER-1's use of COMMON MEASUREMENT'S to measure utilization. APPRAISER-4 indicates that the XXXXX ("XXXXX") uses a FACILITY'S "XXXXX" to measure utilization and that SUBJECT COMPANIES, including PETITIONER, use this measurement in the Form 10-K's to inform the investment community of the

[127] Exhibit 24, p. 34.
[128] Exhibit 35, p. 50.

utilization of their FACILITY assets. APPRAISER-4 states that PETITIONER'S reported daily average XXXXX equates to an average utilization of %%% for YEAR-1, %%% for YEAR-2, and %%% for YEAR-3.[129]

112. Based on the foregoing, APPRAISER-1's inutility deduction for incurable functional obsolescence may be overstated and may include some economic obsolescence for which he has already accounted. As a result, APPRAISER-1's deduction for incurable functional obsolescence is not sufficiently reliable to use in a cost approach that is intended to contest values obtained under Rule 33.

113. Functional Obsolescence (Curable) - ITEM. For YEAR-3, APPRAISER-1 deducted $$$$$ from his cost approach to reflect curable functional obsolescence associated with the PETITIONER'S FACILITY'S XXXXX ITEM, which was built in YEAR.[130] APPRAISER-1 states that a modem replacement for this ITEM would improve XXXXX and XXXXX yields. APPRAISER-1 calculated an annual excess operating penalty due to the yield deficiencies of the current ITEM and capitalized those over the estimated remaining useful life of the ITEM. He determined that the present value of the future losses to be over $$$$$, but determined that the cost to cure would only be $$$$$. As a result, he deducted this $$$$$ amount as the cost to cure this functional obsolescence.[131]

114. APPRAISER-4 did not deny that the some deduction for functional obsolescence concerning the ITEM was appropriate, but contends that the amount of APPRAISER-1's deduction was overstated. APPRAISER-4 contends that APPRAISER-1 has partially accounted for the ITEM already in his cost approach because he previously deducted economic obsolescence (as a percentage) out of sequence. APPRAISER-4 determined that because of the order of APPRAISER-1's deductions, the effective result is a negative value of $$$$$ for the ITEM. As discussed earlier, the ASA treatise Valuing Machinery and Equipment (pp. 110-112) indicates that economic obsolescence is normally the last element

[129] Exhibit 35, p. 51; Exhibit 58, p. 24 (Form K-1).
[130] Exhibit 24, at exhibit 5-A. APPRAISER-1 deducted similar amounts for the ITEM for the other years. Exhibits 22, 23 and 25.
[131] Exhibit 24, p. 95.

of depreciation to affect a property and, as a result, it is the last element of depreciation to be deducted.[132] APPRAISER-1 did not show that the normal sequencing would be inappropriate in this case. As a result, APPRAISER-1's deduction for functional obsolescence for the ITEM is overstated.

115. Functional Obsolescence (Incurable) - Energy/Labor/XXXXX and XXXXX. For the years at issue, APPRAISER-1 deducted incurable functional obsolescence associated with the subject PETITIONER'S FACILITY'S excess use of energy, labor, and XXXXX and XXXXX. For the years at issue, these deductions ranged between $$$$$ and $$$$$. For YEAR-3, the deduction was $$$$$.[133]

116. APPRAISER-1 determined that the PETITIONER'S FACILITY "consumes at least %%% more fuel to operate than a state-of-the-art plant based on information relayed in industry benchmarking studies and experience appraising other FACILITIES." To determine the incurable functional obsolescence penalty, he calculated the PETITIONER'S FACILITY'S "excess annual energy operating cost over a benchmark FACILITY" to be $$$$$ per year. He discounted these excess costs over the remaining useful life of the PETITIONER'S FACILITY to derive a present value of $$$$$, which he determined to be the incurable functional obsolescence for energy.[134]

117. APPRAISER-1 also determined that the PETITIONER'S FACILITY "requires at least %%% more man-hours to operate than a state-of-the-art plant based on information relayed in industry benchmarking studies and experience appraising other FACILITIES." To determine the incurable functional obsolescence penalty, he calculated the PETITIONER'S FACILITY'S "excess annual labor operating cost over a benchmark FACILITY" to be $$$$$ per year. He discounted these excess costs over the remaining useful life of the PETITIONER'S FACILITY to derive a present value of $$$$$, which he determined to be the incurable functional obsolescence for labor.[135]

118. APPRAISER-1 also estimated that the subject PETITIONER'S FACILITY uses more XXXXX and XXXXX than a modern plant. From historical operating records, APPRAISER-1 estimated

[132] Exhibit 57. The treatise explains that "economic obsolescence is usually the last element of depreciation to affect the property (p. 112). See also Exhibit 63.
[133] Exhibits 22, 23, 24 and 25 (at exhibit 5-A).
[134] Exhibit 24, pp. 95-96.
[135] Exhibit 24, p. 97.

that the excess cost for XXXXX and XXXXX is $$$$$ annually. He stated that this annual excess cost "translates to a $$$$$ after-tax present value."[136]

119. The RESPONDENT pointed out that APPRAISER-1's calculations to derive the PETITIONER'S FACILITY'S excess energy and labor costs are based on PETITIONER'S actual costs being %%% *more* than those of a modern replacement (which equates to the modem replacement's costs being %%% *less* than PETITIONER'S actual costs). As a result, the RESPONDENT indicates that APPRAISER-1 incorrectly calculated and overstated functional obsolescence given his assumption that PETITIONER'S FACILITY uses %%% *more* energy and labor. The RESPONDENT'S point is convincing. It does not appear that APPRAISER-1 intentionally calculated his deductions to reflect that PETITIONER uses %%% *more* energy and labor than a modern replacement. As a result, APPRAISER-1's deduction for incurable functional obsolescence for energy and labor is significantly overstated.

120. Economic Obsolescence (Curable) - Necessary XXXXX Capital Expenditures. APPRAISER-1 explained that economic or external obsolescence is the loss in value of a property caused by factors external to the property, including passage of new legislation and changes of ordinances. To maintain compliance with XXXXX and XXXXX standards, APPRAISER-1 indicated that PETITIONER approved and budgeted necessary capital expenditures. He indicates that the costs of these expenditures represent curable economic obsolescence.[137]

121. For each year at issue, APPRAISER-1 determined the additional costs that had not yet been expended and which were expected to be expended to bring the PETITIONER'S FACILITY into compliance. It appears that most of these expenditures occurred in YEAR-1. For the years at issue, APPRAISER-1 deducted curable economic obsolescence for necessary REGULATORY

[136] Exhibit 24, p. 97.
[137] Exhibit 24, pp. 97-98.

EXPENDITURES in the amounts of $$$$$ for YEAR-1, $$$$$ for YEAR-2, $$$$$ for YEAR-3, and $$$$$ for YEAR-4.[138]

122. APPRAISER-4 indicates that APPRAISER-1 made this deduction on the assumption that these REGULATORY EXPENDITURES will add no value to the PETITIONER'S FACILITY. APPRAISER-4 contends that these expenditures do add value to the PETITIONER'S FACILITY. APPRAISER-4 explained that these expenditures are required for all FACILITIES. He explained that when PETITIONER makes these expenditures, the value of the PETITIONER'S FACILITY will be enhanced because the facility will be in full compliance with REGULATORY standards. He further states that if PETITIONER were to sell the PETITIONER'S FACILITY, it would expect to recover the costs of these expenditures and that a potential purchaser would expect to pay a price for them.[139]

123. APPRAISER-4 acknowledges that Rule 33 allows additional depreciation of %%% for XXXXX FACILITY XXXXX equipment, but he does not believe that this additional depreciation may be appropriate. APPRAISER-4 states that at least one report and one court decision in another state have indicated that at a portion of these costs may be passed on to consumers. As a result, APPRAISER-4 does not believe that APPRAISER-1's deduction for economic obsolescence for REGULATORY EXPENDITURES is appropriate.[140]

124. Regardless of whether an obsolescence deduction for future REGULATORY EXPENDITURES is appropriate, there are too many other questions about APPRAISER-1's RPLCN cost approach for it to be considered sufficiently reliable to contest values obtained under Rule 33. There are concerns that APPRAISER-1's RPLCN number may not be reliable. There are also serious concerns that APPRAISER-1's calculation of incurable economic obsolescence is overstated. In addition, APPRAISER-1's inutility deduction for incurable functional obsolescence may be overstated and may include some economic obsolescence that he already deducted. It also appears that APPRAISER-1 has overstated the deductions for functional obsolescence for the ITEM and for excess energy and labor costs.

[138] Exhibit 22, 23,24 and 25 (at exhibit 5-A).
[139] Exhibit 35, pp. 40, 53-54.
[140] Exhibit 35, pp. 40-41.

For these reasons, APPRAISER-1's cost approach model for each year is insufficiently reliable to contest the values obtained for PETITIONER'S personal property with Rule 33.

125. Fair Market Value Conclusion. None of APPRAISER-1's valuation approaches is sufficiently reliable to contest the values obtained for PETITIONER'S personal property with Rule 33. Furthermore, the most reliable valuation information presented by any party to either contest or support the Rule 33 values are the YEAR-3 and YEAR-4 income approach values that APPRAISER-4 derived by making revisions to APPRAISER-1's DCF models for these years. These income approach values support the values derived for PETITIONER'S personal property using Rule 33. As a result, for all years at issue, PETITIONER has not shown that the values sustained by the RESPONDENT at the local level, which were all derived using Rule 33, are incorrect.

126. The RESPONDENT, however, has not shown that the values sustained at the local level for YEAR-3 and YEAR-4, as reflected on PETITIONER'S Signed Statements for these years, are incorrect. PETITIONER determined these values under Rule 33. The County indicated that after the RESPONDENT issued its decision at the local level, it revised these values upward once to reflect changes made in the audit for YEAR-1 and YEAR-2. However, insufficient information was provided at the hearing to show that the values sustained by the RESPONDENT for YEAR-3 and YEAR-4 were incorrect and that the County's revised values are a better reflection of the fair market value of PETITIONER'S personal property for these two years.

PETITIONER'S Equalization Argument

127. PETITIONER raised an equalization claim based on the assessed values of its personal property and the personal property of four other FACILITIES located on the UTAH AREA. None of the four FACILITIES that PETITIONER used as comparables are identical to one another or to PETITIONER'S FACILITY. In order for PETITIONER to compare its assessed values to the assessed

values of the four other FACILITIES, PETITIONER calculated an COMMON MEASUREMENT (COMMON MEASUREMENT) number for itself and the other four FACILITIES.[141]

128. PETITIONER obtained an COMMON MEASUREMENT number for each year from the XXXXX. The COMMON MEASUREMENT is the product of each FACILITY'S XXXXX Index ("XXI")[142] for that year and its XXXXX capacity, which are also found in the XXXXX. PETITIONER then divided the assessed value of each FACILITY by its COMMON MEASUREMENT to show how many dollars at which each COMMON MEASUREMENT was assessed for each year ("AV/COMMON MEASUREMENT"). With this methodology, PETITIONER determined that its assessment per each COMMON MEASUREMENT, or AV/COMMON MEASUREMENT, was significantly higher than the other FACILITIES' assessments per COMMON MEASUREMENT, as follows: [143]

FACILITY/ Company	YEAR-1 AV/COMMON MEASUREMENT	YEAR-2 AV/COMMON MEASUREMENT	YEAR-3 AV/COMMON MEASUREMENT	YEAR-4 AV/COMMON MEASUREMENT
XXXXX	XXXXX	XXXXX	XXXXX	XXXXX
XXXXX	XXXXX	XXXXX	XXXXX	XXXXX
XXXXX	XXXXX	XXXXX	XXXXX	XXXXX
XXXXX	XXXXX	XXXXX	XXXXX	XXXXX
Average of Comparables	**XXXXX**	**XXXXX**	**XXXXX**	**XXXXX**
PETITIONER	XXXXX	XXXXX	XXXXX	XXXXX

129. Because the AV/COMMON MEASUREMENT'S for all of the other FACILITIES are more than 5% lower than PETITIONER'S AV/COMMON MEASUREMENT for each year, PETITIONER contends that its current assessed values must be reduced pursuant to Utah Code Ann. §59-2-1006(4). Otherwise, PETITIONER contends, its assessments will be inequitably high in comparison to the assessments of comparable properties. To achieve equity of assessment, PETITIONER proposes for its value to be reduced to reflect the average AV/COMMON MEASUREMENT derived from

[141] COMMON MEASUREMENT is a unit of comparison to quantify the processing capability of a FACILITY. Exhibit 24, p. 48.
[142] The XXI is a way to compare FACILITY attributes by quantifying the relative construction costs of the individual XXXXX that make up a FACILITY. Exhibit 24, p. 49.
[143] Exhibit 20.

the other FACILITIES' assessments for each year. For each year at issue, the following chart shows the RESPONDENT'S current value of PETITIONER'S personal property, the fair market value that PETITIONER proposed, and the equalized value PETITIONER has derived for its personal property with the methodology shown in Exhibit 20:

Year	Current Value	PETITIONER'S Proposed Fair Market Value	PETITIONER'S Proposed Equalized Value
YEAR-1	$$$$$	$$$$$	$$$$$
YEAR-2	$$$$$	$$$$$	$$$$$
YEAR-3	$$$$$	$$$$$	$$$$$
YEAR-4	$$$$$	$$$$$	$$$$$

130. If the Commission accepts PETITIONER'S Proposed Fair Market Values, as shown in the chart above, PETITIONER does not ask for a further reduction for any year for purposes of equalization, because it primarily relied upon its equalization evidence to corroborate the valuations identified in APPRAISER-1's appraisals.[144] However, if the Commission does not find the values estimated by APPRAISER-1 to be convincing, PETITIONER asks the Commission to reduce the values of its personal property to reflect the proposed equalized values, as shown in the chart above.

131. The COMMON MEASUREMENT methodology to compare FACILITIES' different assessments is not a convincing method to show whether the assessed values of PETITIONER'S personal property are equitable. Furthermore, it is not clear that the four FACILITIES are, indeed, sufficient comparables to use for an equalization argument. The COMMON MEASUREMENT'S shown for PETITIONER and the other FACILITIES reflect the XXXXX located at each FACILITY, which are not the same for each FACILITY. In addition, the COMMON MEASUREMENT methodology does not reflect differences in value due to age. PETITIONER has obtained some new processing equipment since YEAR. It is unknown whether the four FACILITIES PETITIONER used as equalization comparables have obtained new processing equipment within the same timeframe and whether their personal property is, on the whole, older than PETITIONER'S.[145]

---

[144] PETITIONER'S Proposed Findings of Fact, Conclusions of Law, and Final Decision, p. 62.

[145] It is known that around YEAR-3, two of PETITIONER'S four comparable properties/companies, specifically

132. In addition, PETITIONER has also spent significant amounts on AGREEMENT equipment since YEAR and is now in compliance with the REGULATORY REQUIREMENTS. Testimony shows that the other FACILITIES have not completed or even started their AGREEMENT improvements.[146] PETITIONER contends that AGREEMENT items do not have a significant impact on value, but the evidence and testimony is insufficient to show that this assertion is true.[147] The COMMON MEASUREMENT methodology also does not measure differences in operating costs and input charges, which may vary depending upon the type of crude produced. Finally, the various AV/COMMON MEASUREMENT's of the four other FACILITIES vary greatly. Even if the other concerns expressed above about PETITIONER'S equalization argument did not exist, using an average of these widely disparate AV/COMMON MEASUREMENT's to establish an equalized value for PETITIONER'S personal property could very well result in an inequitably low value for PETITIONER'S personal property.

133. In addition, it has not been established that any of the assessed values of the other four FACILITIES do not reflect their fair market values. The limited testimony provided on these other FACILITIES suggests that they are valued and assessed under Rule 33 in the same manner as the assessments for PETITIONER'S FACILITY. As a result, the evidence does not show that the other four FACILITIES' assessed values reflect a systematic practice of undervaluation.

134. Based on the foregoing, PETITIONER has not shown that the assessed value of its personal property for any year at issue deviates %%% or more from the assessed values of comparable properties.

COMPANY-K and COMPANY-L, announced plans to make capital expenditures to improve yields and increase capacity. Exhibit 52, p. 15 (COMPANY-K YEAR-3 10-K) and Exhibit 53, p. 51 (COMPANY-L YEAR-3 10-K).

[146] PETITIONER'S WITNESS 2 testified that COMPANY-M had just signed its AGREEMENT and that the other FACILITIES were behind PETITIONER.

[147] PETITIONER'S WITNESS 2 testified that once PETITIONER signed its AGREEMENT in YEAR, it lost value because it was no longer compliant and because it would take $$$$$ in investment for AGREEMENT items to come back into compliance. This suggests that a FACILITY that has signed a AGREEMENT but not yet installed the AGREEMENT items may be less valuable than a FACILITY that has installed the items and come into compliance.

APPLICABLE LAW

1. Article XIII, Section 2(1) of the Utah Constitution provides for the taxation of tangible property in the state, as follows:

> (1) So that each person and corporation pays a tax in proportion to the fair market value of his, her, or its tangible property, all tangible property in the state that is not exempt under the laws of the United States or under this Constitution shall be:
> (a) assessed at a uniform and equal rate in proportion to its fair market value, to be ascertained as provided by law; and
> (b) taxed at a uniform and equal rate.

2. Utah Code Ann. §59-2-103(1) (2009)[148] provides that "[a]ll tangible taxable property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law."

3. "Fair market value" is defined in UCA §59-2-102(12) to mean "the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts...."

4. UCA §59-2-301 provides that "[t]he county assessor shall assess all property located within the county which is not required by law to be assessed by the commission."

5. UCA §59-2-107 provides that the Commission shall make rules defining classes of personal property and items that fall into those classes, as follows:

> The commission shall make rules:
> (1) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
> (2) defining classes of items considered to be personal property for purposes of this chapter;
> (3) defining items that fall into the classes established under Subsection (2); and
> (4) defining any class or item as personal property if the commission defined that class or item as personal property prior to January 1, 2004, by:
> (a) a rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
> (b) a published decision of the commission; or
> (c) an official schedule published by the commission.

---

[148] Unless otherwise noted, all cites are to the 2009 version of Utah law.

6. Utah Admin. Rule R884-24P-33 ("Rule 33") was adopted to provide guidance concerning the valuation of personal property and to set forth the various classes of personal property, as follows in pertinent part:

> (1) Definitions.
> . . . .
> (e) "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.
> (i) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.
> (ii) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, other data sources or research, and vehicle valuation guides such as Penton Price Digests.
> (2) Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.
> (a) Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.
> (b) A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.
> (c) County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.
> (d) A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value.
> . . . .
> (5) Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.
> (6) All taxable personal property, other than personal property subject to an age-based uniform fee under Section 59-2-405.1 or 59-2-405.2, or a uniform statewide fee under Section 59-2-404, is classified by expected economic life as follows:
> (a) Class 1 -Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.
> (i) Examples of property in the class include:
> (A) barricades/warning signs; (B) library materials;
> (C) patterns, jigs and dies; (D) pots, pans, and utensils;
> (E) canned computer software; (F) hotel linen;
> (G) wood and pallets;
> (H) video tapes, compact discs, and DVDs; and
> (I) uniforms.
> . . . .
> (b) Class 2 - Computer Integrated Machinery.

. . . .

(c) Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.

(i) Examples of property in this class include:

(A) office machines;
(B) alarm systems;
(C) shopping carts;
(D) ATM machines;
(E) small equipment rentals;
(F) rent-to-own merchandise;
(G) telephone equipment and systems;
(H) music systems;
(I) vending machines;
(J) video game machines; and
(K) cash registers and point of sale equipment.

(d) Class 4 Short Life Expensed Property.

. . .

(e) Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.

(i) Examples of property in this class include:

(A) furniture;
(B) bars and sinks:
(C) booths, tables and chairs;
(D) beauty and barber shop fixtures;
(E) cabinets and shelves;
(F) displays, cases and racks;
(G) office furniture;
(F) theater seats;
(G) water slides; and
(H) signs, mechanical and electrical.

. . . .

(f) Class 6- Heavy and Medium Duty Trucks.

(i) Examples of property in this class include:

(A) heavy duty trucks;
(B) medium duty trucks;
(C) crane trucks;
(D) concrete pump trucks; and
(E) trucks with well-boring rigs.

. . . .

(g) Class 7 - Medical and Dental Equipment.

(h) Class 8 - Machinery and Equipment. Property in this class is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.

(i) Examples of property in this class include:

(A) manufacturing machinery;
(B) amusement rides;
(C) bakery equipment;
(D) distillery equipment;
(E) refrigeration equipment;

(F) laundry and dry cleaning equipment;
(G) machine shop equipment;
(H) processing equipment;
(I) auto service and repair equipment;
(J) mining equipment;
(K) ski lift machinery;
(L) printing equipment;
(M) bottling or cannery equipment;
(N) packaging equipment; and
(O) pollution control equipment.

(ii) Except as provided in Subsection (6)(g)(iii)[149] taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) (A) Notwithstanding Subsection (6)(g)(ii), the taxable value of the following oil refinery pollution control equipment required by the federal Clean Air Act shall be calculated pursuant to Subsection (6)(g)(iii)(B):

(I) VGO (Vacuum Gas Oil) reactor;
(II) HDS (Diesel Hydrotreater) reactor;
(III) VGO compressor;
(IV) VGO furnace;
(V) VGO and HDS high pressure exchangers;
(VI) VGO, SRU (Sulfur Recovery Unit), SWS (Sour Water Stripper), and TGU; (Tail Gas Unit) low pressure exchangers;
(VII) VGO, amine, SWS, and HDS separators and drums;
(VIII) VGO and tank pumps;
(IX) TGU modules; and
(X) VGO tank and air coolers.

(B) The taxable value of the oil FACILITY pollution control equipment described in Subsection (6)(g)(iii)(A) shall be calculated by:

(I) applying the percent good factor in Table 8 against the acquisition cost of the property; and
(II) multiplying the product described in Subsection (6)(g)(iii)(B)(I) by 50%.

. . . .

(i) Class 9- Off-Highway Vehicles.

. . . .

(j) Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property. . . .

. . . .

(l) Class 12- Computer Hardware.

(i) Examples of property in this class include:
(A) data processing equipment;
(B) personal computers;
(C) main frame computers;
(D) computer equipment peripherals;

[149] Throughout the remainder of this Subsection (h), references to this subsection are erroneously labeled with a (g) instead of an (h). This issue was resolved in 2013.

(E) cad/cam systems; and
(F) copiers.

. . . .

(m) Class 13- Heavy Equipment.
(i) Examples of property in this class include:
(A) construction equipment;
(B) excavation equipment;
(C) loaders;
(D) batch plants;
(E) snow cats; and
(F) pavement sweepers.

. . . .

(o) Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products. Equipment used in the semiconductor manufacturing industry is subject to significant economic and functional obsolescence due to rapidly changing technology and economic conditions.

. . . .

(p) Class 16 -Long-Life Property. Class 16 property has a long physical life with little obsolescence.
(i) Examples of property in this class include:
(A) billboards;
(B) sign towers;
(C) radio towers;
(D) ski lift and tram towers;
(E) non-farm grain elevators; and
(F) bulk storage tanks. . . .

. . . .

(t) Class 20 -Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

. . . .

(u) Class 21 -Commercial Trailers.
(i) Examples of property in this class include:
(A) dry freight van trailers;
(B) refrigerated van trailers;
(C) flat bed trailers;
(D) dump trailers;
(E) livestock trailers; and
(F) tank trailers....

. . . .

7. UCA §59-2-1005 (2010)[150] provides procedures for a taxpayer to appeal a personal property valuation, as follows in pertinent part:

[150] This statute was amended in 2010, and the 2010 version of the statute is still in effect. Throughout all tax years at issue, a taxpayer is afforded the opportunity to appeal a personal property valuation to the county legislative body and, if the taxpayer was dissatisfied with the decision rendered by the county legislative body, to appeal that decision to the Tax Commission in accordance with Section 59-2-1006.

> (1) (a) A taxpayer owning personal property assessed by a county assessor under Section 59-2-301 may make an appeal relating to the value of the personal property by filing an application with the county legislative body no later than:
>
> (i) the expiration of the time allowed under Section 59-2-306 for filing a signed statement, if the county assessor requests a signed statement under Section 59-2-306; or
>
> (ii) 60 days after the mailing of the tax notice, for each other taxpayer.
>
> (c) If the taxpayer is dissatisfied with a county legislative body decision under Subsection (1)(b), the taxpayer may file an appeal with the commission in accordance with Section 59-2-1006.

8. UCA §59-2-1006 provides that a taxpayer may appeal a decision of a county board of equalization concerning the assessment and equalization of property to the Tax Commission, as follows in pertinent part:

> (1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board.
>
> . . . .
>
> (3) In reviewing the county board's decision, the commission may: (a) admit additional evidence;
>
> (b) issue orders that it considers to be just and proper; and
>
> (c) make any correction or change in the assessment or order of the county board of equalization.
>
> (4) In reviewing the county board's decision, the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if:
>
> (a) the issue of equalization of property values is raised; and
>
> (b) the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties.
>
> . . . .

DISCUSSION

I PETITIONER'S Fair Market Value Argument.

To facilitate the assessment of personal property each year, Utah law requires taxpayers to self-report their personal property and to derive a valuation estimate for their property by applying a set of percent good tables that are adopted annually by the Commission. Section 59-2-306; Rule 33. For each of the years at issue, PETITIONER submitted its Personal Property Signed Statement using the guidelines provided under Rule 33. However, PETITIONER believed that the percent good tables failed to adequately account for all forms of obsolescence that were associated with its XXXXX FACILITY

machinery and equipment and that the resulting values of its personal property exceeded its fair market value.

Three issues concerning PETITIONER'S fair market value argument need to be addressed, specifically: 1) burden of proof and presumption of correctness; 2) the use of a "unitary" approach to demonstrate the value of personal property instead of an approach, like Rule 33, that values each item of personal property separately; and 3) the fair market value established by the parties' evidence.

A. Burden of Proof and Presumption of Correctness. PETITIONER has a two-fold burden of proof regarding its fair market value argument. To prevail, PETITIONER must first demonstrate that the values established by the RESPONDENT contain substantial error or impropriety in the assessments. Second, it must provide the Commission with a sound evidentiary basis for reducing the valuations to the amounts it proposed. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm 'n*, 590 P.2d 332, (Utah 1979); *Beaver County v. Utah State Tax Comm'n*, 916 P.2d 344 (Utah 1996).

A presumption of correctness applies to the original assessment only after "evidence supporting the original property valuation is submitted to the Commission." *Utah Railway Co. v. Utah State Tax Comm 'n*, 5 P.3d 652 (Utah 2000). The parties agree that the audit values that the RESPONDENT sustained for the YEAR-1 and YEAR-2 tax years are entitled to the presumption of correctness. The audit assessments were submitted as evidence to the Commission. Accordingly, the YEAR-1 audit value of $$$$$ and the YEAR-2 audit value of $$$$$ both have the presumption of correctness.

The parties, however, do not agree on whether any values for YEAR-3 and YEAR-4 are entitled to the presumption of correctness. For these two years, the RESPONDENT sustained the values shown on the YEAR-3 and YEAR-4 Signed Statements that PETITIONER submitted to the County. However, more than a year after the County BOE issued its decision, the County Assessor increased those values. The RESPONDENT now asks the Commission to adopt those higher values.

Given these circumstances, PETITIONER argues that there is no presumption of correctness for either the original values sustained by the RESPONDENT or the revised, higher assessments the RESPONDENT now proposes for YEAR-3 and YEAR-4. Often, when a County no longer supports an original value sustained by a County BOE, the parties do not provide the Commission evidence of how that original value was determined. In such circumstances, the original value sustained by the County BOE does not have the presumption of correctness (pursuant to *Utah Railway Co. v. Utah State Tax Comm 'n*, 5 P.3d 652 (Utah 2000)), and the Commission must use the preponderance of the evidence standard in determining a value.

In *Utah Railway*, the Utah Supreme Court addressed a centrally-assessed property tax case where all parties proposed values that were different from the original valuation and where no party submitted the original valuation into evidence. Under these circumstances, the Court found that the original valuation was not entitled to a presumption of correctness, as follows:

> The Commission correctly notes that Utah Railway had the burden of demonstrating substantial error and providing an evidentiary basis for the Commission to adopt a lower valuation.... Based on this premise, the Commission argues that the original valuation is entitled to a "presumption of correctness." We agree that such a presumption is necessarily implied by our holding in Utah Power & Light Co. **That presumption does not arise, however, unless and until available evidence supporting the original property valuation is submitted to the Commission** (emphasis added).

In the instant appeal, the circumstances are different from those in Utah Railway because evidence of the original valuations for YEAR-3 and YEAR-4 (i.e., PETITIONER'S YEAR-3 and YEAR-4 Personal Property Signed Statements, which the County BOE sustained) were submitted as evidence to the Commission. As a result, it appears that the $$$$$ value shown in PETITIONER'S YEAR-3 Signed Statement and the $$$$$ value shown in its YEAR-4 Signed Statement would have the presumption of correctness.

As a result, it would also appear that both PETITIONER and the RESPONDENT have a twofold burden in regards to the different values they propose for YEAR-3 and YEAR-4 pursuant to Utah Railway, in which the Court further stated:

> Where a taxpayer challenges the valuation of property before the Commission, the entity defending against the challenge must present the available evidence supporting the original valuation. Once that is done, the taxpayer, or any other entity seeking an adjustment of the original valuation, must meet its twofold burden of demonstrating "substantial error or impropriety in the [original] assessment," and providing "a sound evidentiary basis upon which the Commission could adopt a lower valuation." *Utah Power & Light Co.*, 590 P.2d at 335.

The RESPONDENT, however, contends that the revised values of $$$$$ and $$$$$ that it proposes for YEAR-3 and YEAR-4, respectively, have the presumption of correctness because the revised values results from a "technical correction of the Original Assessment to compensate for a reporting error made by Petitioner." To support this argument, the RESPONDENT relies on the Commission's decision in *USTC Appeal No. 99-0568* (Findings of Fact, Conclusions of Law, and Final Decision Apr. 4, 2001). In that case, the Commission considered a centrally-assessed property where the Division issued its original assessment to reflect information provided by a taxpayer. The Commission held that where the Division has changed its appraisal because of an error made by the taxpayer (i.e., the taxpayer's reporting is incorrect), the amended appraisal is entitled to the same presumption as the original appraisal and assessment.

The Commission, however, is reluctant to apply the ruling from *Appeal No. 99-0568* to the instant case. First, the Commission's ruling in *Appeal No. 99-0568* was appealed to the Utah Supreme Court, and the Court appears to have resolved the matter without having to address that portion of the Commission's decision concerning presumption or correctness. *See Beaver County v. Property Tax Div. of Utah State Tax Comm'n*, 128 P.3d 1187, 2006 UT 6 (Utah 2006). Second, in the instant case, there was little information about the actual changes that the County made to PETITIONER'S YEAR-3 and YEAR-4 Signed Statements to show that PETITIONER had made errors and incorrectly reported its property. The RESPONDENT stated that it changed PETITIONER'S YEAR-3 and YEAR-4 Signed Statements to reflect the changes made in the audit for YEAR-1 and YEAR-2. However, the parties have not discussed each change the County made for YEAR-3 and YEAR-4 and have not shown that the changes resulted from

reporting errors made by PETITIONER. For these reasons, the revised values that the RESPONDENT proposes for YEAR-3 and YEAR-4 are not entitled to a presumption of correctness.[151]

In conclusion, the values the RESPONDENT sustained for YEAR-3 and YEAR-4 have the presumption of correctness, and both PETITIONER and the RESPONDENT have a twofold burden to demonstrate substantial error or impropriety in these values and provide a sound evidentiary basis upon which the Commission could adopt their proposed value.

B. Use of Unitary Method to Value Personal Property.

PETITIONER challenges the values that were derived for its personal property with the Rule 33 percent good tables by valuing all assets at its PETITIONER'S FACILITY as one thing or as a unit. Once APPRAISER-1 determined a unitary value for all of the PETITIONER'S FACILITY'S assets, he subtracted from it values for intangible property, exempt inventory, and real property to arrive at a residual value. PETITIONER asserts that this residual value represents the combined value of the personal property located at its PETITIONER'S FACILITY and that it shows that the values derived with the Rule 33 percent good tables are too high to reflect fair market value.

The RESPONDENT, however, contends that Utah law precludes PETITIONER from using this unitary approach to value its personal property or to demonstrate error in the values derived with the Rule 33 percent good tables. The RESPONDENT claims that Rule 33 expressly allows PETITIONER to appeal the fair market value of a specific item of personal property, but does not allow PETITIONER to appeal by presenting evidence of a unitary appraisal with which it derives the combined value of its personal property instead of deriving a value for each item of personal property. The RESPONDENT further claims that the constitutional principle of uniformity would be violated if identical items of personal property assessed with Rule 33 at the local level are valued differently than items owned by PETITIONER that are part of a larger unit and that PETITIONER has valued with a unitary approach.

---

[151] These observations concerning the changes the County made to PETITIONER'S YEAR-3 and YEAR-4 Signed Statements are made for purposes of determining which values have the presumption of correctness for these years. The Commission will address whether the RESPONDENT has met its twofold burden to show that these changes should be adopted later in the decision.

PETITIONER'S arguments are more persuasive than the RESPONDENT'S. Rule 33 provides a mass appraisal methodology to value personal property. The Rule 33 guidelines do not, however, preclude a party's right to use other valuation methodologies to estimate the fair market value of personal property during the appeals process. The Utah Code requires that personal property "shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value." Section 59-2-103(1). "Fair market value" is defined as "the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant fact." Section 59-2-102(12). When property value is considered in the appeals process and outside of the mass appraisal arena, there may be evidence that will produce a more accurate "fair market value" than the mass appraisal methodology initially used to assess the property.

In *Kennecott Copper Corp. v. Salt Lake County*, 799 P.2d 1156 (Utah 1990), the Utah Supreme Court considered property that had been centrally-assessed based on a statutory provision that prescribed the formula for the assessment of mining property. In that case, the County alleged that the statutory formula undervalued Kennecott's property. The Court ruled that the county should be allowed an opportunity to demonstrate that other valuation methods would yield a more accurate estimate of fair market value. Similarly, PETITIONER should be allowed an opportunity to demonstrate that a valuation method other than the one set forth in Rule 33 would yield a more accurate estimate of the fair market value of its personal property.

Furthermore, in *T-Mobile USA, Inc. v. Utah State Tax Comm 'n*, 254 P.3d 752, 2011 UT 28 (Utah 2011), the Utah Supreme Court considered the "preferred" methodology to assess a centrally-assessed unitary property, as set forth under Utah Admin. Rule R884-24P-62 ("Rule 62"). The Court rejected strict adherence to the "preferred" valuation methodologies found in that rule, stating:

> Moreover, while we have previously stated that the unitary appraisal method is the 'most rational way to determine the value of an enterprise whose function relies upon cross-boundary connections,' *WilTel*, 2000 UT 29,21, 995 P.2d 602, this does not render the use of unitary appraisal for such properties mandatory. And the Utah Code does not require the use of the unitary method. Rather, the code simply provides that property shall be assessed by the Commission at 100 percent of fair market value. Requiring the tax

> court to use a specific valuation method ignores the reality that certain methodologies are not always accurate in every circumstance.

Section UCA §59-2-107 provides that the Commission shall make rules defining classes of personal property and items that fall into those classes. However, Utah statutes do not explicitly provide that the fair market value of personal property may only be determined with the percent good tables found in Rule 33.

Furthermore, Rule 33(2)(d) provides that "[a] party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade ... ." If a party is allowed to show that the fair market value of an individual item of personal property is incorrect, it should also be allowed to show that the cumulative fair market value of its personal property is incorrect without having to present an appraisal of each item of personal property. Rule 33(2)(d) is best read to provide one methodology with which to challenge a taxpayer's personal property assessment that has been derived with Rule 33, not to preclude all other methodologies that might show the assessment to be incorrect.

Finally, the Commission also disagrees with the RESPONDENT'S argument that constitutional principles of uniformity would be violated if all other taxpayers are being assessed and taxed on values derived with Rule 33 and if PETITIONER is allowed to demonstrate a value that is lower than the value derived with Rule 33. Essentially, it appears that the RESPONDENT is arguing that even if the taxpayer is able to show that the cumulative assessed value of its personal property exceeds its fair market value, it should be taxed on an amount that exceeds fair market value in order to achieve uniformity. The Commission agrees with the taxpayer that the principle of uniformity is no defense to an assessment that exceeds fair market value.

The RESPONDENT'S uniformity argument is similar, if not identical, to the argument made by Fairfax County in *Board of Supervisors of Fairfax County v. Telecommunications Industries, Inc.*, 436 S.E.2d 442 (Va. 1993). In that case, the county claimed the right to adhere to its depreciation schedules so long as the schedules were applied uniformly. The county further argued that principles of uniformity

would not permit it to depart from those schedules even when taxpayers demonstrated that the application of the schedule did not reflect the fair market value of the property. The Virginia Supreme Court rejected the County's argument, stating that "the preference for uniformity must stop short of assessment at greater than fair market value" (*quoting Board of Supervisors v. Donatelli & Klein*, 228 Va. 620, 629, 325 S.E.2d 342, 346 (1985).

In *Mountain Ranch Estates v. Utah State Tax Comm 'n*, 100 P.3d 1206 (Utah 2004), the Utah Supreme Court stated that "[f]air market value indeed becomes a subordinate consideration in a scenario where a property owner's assessment accurately reflects the property's fair market value, but nevertheless exceeds by more than five percent the valuation of comparable properties." The Court, however, has not stated that fair market value becomes a subordinate consideration where a property owner's assessment accurately reflects the property's fair market value, but is more than five percent lower than the valuation of comparable properties. Furthermore, the County has not identified a single case in which property was valued in excess of its fair market value in the interest of achieving uniformity. For these reasons, the Commission concludes that Utah law does not prohibit the use of a unitary appraisal approach to show that the fair market value of personal property is less than the cumulative value of items derived with the Rule 33 percent good tables.

C. Parties' Fair Market Value Evidence.

Section 59-2-103(1) provides that "[a]ll tangible taxable property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law." Furthermore, "fair market value" is defined in UCA §59-2-102(12) to mean "the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. . . ." Rule 33 provides a mass appraisal method with which personal property in Utah is assessed using historical costs and percent good depreciation tables. In addition, Rule 33(2)(d) makes clear that the fair market value derived for personal property should reflect its value "at the retail level of trade."

PETITIONER submitted appraisals prepared by APPRAISER-1 to contest the values obtained for its personal property under Rule 33. These appraisals show values that are significantly lower than the values produced under Rule 33. Neither the RESPONDENT nor the INTERVENER submitted appraisals with other valuation methods to support of the values produced under Rule 33. Nevertheless, a thorough review of APPRAISER-1's appraisals indicate that none of the income approaches to value he derived are sufficiently reliable to show that the values produced under Rule 33 are incorrect. Each of APPRAISER-1's valuation approaches will be discussed below.

Income Approach. APPRAISER-1 prepared a DCF income approach for each of the tax years at issue, with which he obtained a unitary value for the PETITIONER'S FACILITY. APPRAISER-1 adjusted the unitary value obtained for the PETITIONER'S FACILITY by subtracting working capital, intangible assets/goodwill, and land value to estimate a remainder unitary value for PETITIONER'S personal property. The RESPONDENT showed that three changes should be made to APPRAISER-1's income approach. First, it showed that the %%% deduction for intangible assets/goodwill that APPRAISER-1 made to his DCF value is questionable because it was based on an assumption that this amount of intangible assets/goodwill exists at the PETITIONER'S FACILITY. The INTERVENER also showed that because there was no detail about the intangible assets/goodwill being deducted, the deduction may not comport with Section 59-2-102(20) (2009), which defines intangible property, which is not subject to Utah property taxation, as "property that is capable of private ownership separate from tangible property" and "goodwill." Second, the RESPONDENT provided sufficient information to show that APPRAISER-1's pre-tax DCF models should be revised to after-tax models in order to reflect tax deductible depreciation.

Third, the RESPONDENT showed that the WACC's that APPRAISER-1 developed for each year were too high, primarily because he added a size premium to his CAPM cost of equity calculation. The size premiums that APPRAISER-1 added to his cost of equity for each year ranged between %%% and %%%. The RESPONDENT'S arguments against adding a size premium were convincing.

Usually, DCF models and WACC's are not commonly used to assess or value locally-assessed properties, including locally-assessed personal property. DCF models and WACC's, however, are commonly used to assess and value certain centrally-assessed properties. For centrally-assessed properties, the Commission has had a long-standing practice not to incorporate a size premium when calculating WACC's that are then used to derive values for property tax purposes. The evidence is insufficient to show that the Commission should disregard this long-standing practice and apply the size premium to PETITIONER in this locally-assessed appeal.

APPRAISER-1 obtained the size premium he added to his cost of equity from the YEAR-3 Ibbotson Yearbook for companies with relatively low market capitalizations. APPRAISER-4's arguments against the addition of an Ibbotson size premium to the cost of equity are convincing. APPRAISER-4 explained that the size premium has been criticized for a variety of reasons. These arguments are persuasive to show that it is not clear that a size premium based on the "full" Ibbotson period (i.e., from 1926 to the present), as proposed by APPRAISER-1, accurately reflects the investment risk that exists for an investor in the tax years at issue in this appeal.

In addition, the Commission disagrees with PETITIONER'S position that a size premium, even if appropriate, should be based on the PETITIONER'S FACILITY'S value or market capitalization instead of the value or market capitalization of PETITIONER'S large, XXXXX company or an investor likely to purchase the PETITIONER'S FACILITY. The Commission does not believe that PARENT COMPANY or a likely investor of the PETITIONER'S FACILITY would sell the PETITIONER'S FACILITY for a price that included a %%% size premium. Accordingly, even if a size premium were appropriate, it should be based on the value or market capitalization of PARENT COMPANY. There would be no size premium for a company the size of PARENT COMPANY'S large, XXXXX company.

Lastly, the Commission does not believe that the long-standing practice concerning the size premium should be addressed in the appeals process. If a party desires for the long-standing practice to be overturned, we recommend it be done through rulemaking or by statute so that the full effects of the practice

can be considered *for all taxpayers*. APPRAISER-1's evidence suggests that companies with valuations under $$$$$ of market capitalization should be valued with a size premium between %%% and %%% for the years at issue. There are very few locally-assessed or even centrally-assessed properties with values that are greater than $$$$$. As a result, changing the Commission's practice on the size premium could result in the costs of equity for most companies being determined with significant size premiums that would substantially reduce values. Depending on which properties would be affected by the size premium, the potential reduction in values for these properties could raise substantial concerns about statewide uniformity. Because of these potential effects, the Commission sustains the long-standing practice concerning the size premium for all taxpayers, including PETITIONER, until it is changed by rulemaking or by statute.

APPRAISER-4 prepared an income approach value for PETITIONER'S personal property for YEAR-3 and YEAR-4 by using APPRAISER-1's DCF models and making these three changes to them. With these revisions, APPRAISER-4 derived DCF income approach values for PETITIONER'S personal property of approximately $$$$$ for YEAR-3 and $$$$$ for YEAR-4. In comparison, APPRAISER-1 derived income approach values of $$$$$ for YEAR-3 and $$$$$ for YEAR-4. APPRAISER-4 has shown that these changes have a substantial impact on the income approach values that APPRAISER-1 derived with this DCF model. Accordingly, it is reasonable to assume that similar changes would also have a significant impact on the income approach values APPRAISER-1 derived for YEAR-1 and YEAR-2. For these reasons, the income approach values that APPRAISER-1 derived for all years at issue are not convincing.

It is also noted that the income approach values derived by APPRAISER-4 for YEAR-3 and YEAR-4, once he made appropriate changes to APPRAISER-1's DCF models, support the values that the County BOE sustained at the local level for these years. APPRAISER-4's income approach values for YEAR-3 and YEAR-4 lend support to the values sustained by the RESPONDENT for YEAR-1 and YEAR-2, as well.

Sales Comparison Approach. APPRAISER-1 adjusted a number of comparables sales of FACILITIES to estimate a sales comparison approach value for PETITIONER'S personal property for each year at issue. The RESPONDENT, however, raised concerns about APPRAISER-1's comparables, his determination of FACILITY sales prices, and his adjustments to these sales prices to render his sales comparison approaches suspect and sufficiently unreliable to contest the values derived under Rule 33.

A review of the transactions involving the sales of the comparable FACILITIES shows that the transactions are complex and often include other assets and contract provisions. As a result, it is difficult to allocate a portion of the transaction price to the comparable FACILITY alone. This is evidenced by the fact that APPRAISER-1 and APPRAISER-2 used many of the same comparables in their analyses, yet derived different sales prices for many of these FACILITIES, sometimes significantly different. In addition, APPRAISER-4 has provided information about the transactions and the difficulty with making adjustments to the transaction prices in order to arrive at the FACILITY sales price. There are too many variables to these transactions for the FACILITY sales prices that either APPRAISER-1 or APPRAISER-2 derived to be convincing. As a result, APPRAISER-1's sales comparison approach and APPRAISER-2's critique are both suspect.

Furthermore, some of adjustments APPRAISER-1 made to the FACILITY sales prices are suspect. All of APPRAISER-1's comparables were FACILITIES with higher effective ages than the subject property, some significantly so. Although APPRAISER-1 used a formula to adjust for effective age, it is not clear that this formula accounts for the capital expenditures that would need to be expended to make the comparables' effective ages similar to the subject property's effective age. APPRAISER-1's adjustment for effective age is also not convincing because he did not include comparable sales of FACILITIES that had effective ages equal to or lower than the subject's effective age in order to "bracket" the comparables.

In addition, several of APPRAISER-1's (and APPRAISER-2's) comparables have problems that do not affect the subject property. It appears that many of the comparables are FACILITIES that were closed, that needed significant amounts of investment, or that had owners exiting the market. It is not clear that the

use of these comparables would derive the value of PETITIONER'S personal property at the "retail level of trade."

For these reasons, APPRAISER-1's sales comparison approaches do not show that the values established for PETITIONER'S personal property using the percent good tables on Rule 33 are incorrect. Similarly, APPRAISER-2's critique does not show that the values established for PETITIONER'S personal property using the percent good tables of Rule 33 are incorrect. Furthermore, the income approach values that APPRAISER-4 derived by making changes to APPRAISER-1's DCF income approach models are more convincing values than APPRAISER-1's sales comparison approach values.

Cost Approach. APPRAISER-1 determined his cost approach values by estimating the RPLCN (replacement cost new) of PETITIONER'S personal property and making adjustments to this amount. APPRAISER-1 prepared his RPLCN by relying on XXXXX Report. In the XXXXX Report, current construction costs and operating characteristics are provided for each XXXXX and XXXXX property. APPRAISER-1 attributed construction costs to each major XXXXX or XXXXX to determine an overall RPLCN, then made adjustments to the costs for time, location, and capacity to reflect the assets at PETITIONER'S FACILITY.

The RESPONDENT raised concerns that suggest that the RPLCN number that APPRAISER-1 derived with this methodology may not be reliable. The possibility for errors in calculating RPLCN is present where the number is produced by trending nearly XX-year indexes forward to the lien dates, then adjusting the trended costs down to estimate the value of a FACILITY approximately one-fifth the size in a different area of the country. In addition, other subjective adjustments are required concerning indirect costs and interest. Furthermore, the RESPONDENT has raised legitimate questions concerning APPRAISER-1's methodology to estimate the replacement cost new of PETITIONER'S significant XXXXX property. For these reasons, the complex and often subjective calculations APPRAISER-1 used to calculate RPLCN are not sufficiently reliable to use in a cost approach intended to contest values obtained under Rule 33.

There are also serious concerns as to whether APPRAISER-1's deductions for incurable economic obsolescence are appropriate. It is unclear whether any incurable economic obsolescence existed for the subject property for the years at issue. APPRAISER-4 has demonstrated that APPRAISER-1's conclusions concerning economic obsolescence would be significantly different if PETITIONER'S own earnings are considered instead of the companies on which APPRAISER-1 relied. In addition, APPRAISER-4 has shown that APPRAISER-1's price-to-book analysis is suspect and that this approach may instead show that no economic obsolescence exists for YEAR-3 and YEAR-4, the two years he examined. APPRAISER-4 also showed that the manner in which APPRAISER-1 sequenced his economic obsolescence adjustment is most probably incorrect. For these reasons, APPRAISER-1's deductions for incurable economic obsolescence are suspect and are not sufficiently reliable to deduct from a cost approach intended to contest values obtained under Rule 33.

There are also concerns with APPRAISER-1's deduction for functional obsolescence for inutility. It is possible that APPRAISER-1's includes in this deduction not only functional obsolescence concerning equipment problems, but also economic obsolescence concerning demand. If this is the case, a portion of APPRAISER-1's deduction for utility may have already been deducted as economic obsolescence. In addition, it is questionable whether APPRAISER-1 used the most appropriate measurement with which to derive an inutility number. As a result, APPRAISER-1's deduction for incurable functional obsolescence for inutility is not sufficiently reliable to use in a cost approach intended to contest values obtained under Rule 33. There are also questions as to whether APPRAISER-1 has overestimated his deductions for functional obsolescence for the ITEM and for excess energy and labor costs. For these reasons, there are too many concerns about APPRAISER-1's RPLCN cost approach for it to be considered sufficiently reliable to contest values obtained under Rule 33.

Fair Market Value Conclusion. None of APPRAISER-1's valuation approaches is sufficiently reliable to contest the values obtained for PETITIONER'S personal property with Rule 33. The most reliable valuation information presented by any party to either contest or support the Rule 33 values are the

income approach values obtained by APPRAISER-4 after he revised APPRAISER-1's DCF models for YEAR-3 and YEAR-4. These income approach values support the values derived for PETITIONER'S personal property under Rule 33. As a result, for the years at issue, PETITIONER has not shown that any of the values sustained by the County BOE at the local level, which were all derived under Rule 33, are incorrect.

It appears that the appeal has arisen, in part, because PETITIONER has spent significant amounts of capital expenditures on REGULATORY equipment pursuant to governmental regulations and because it does not believe that the additional deduction of %%% allowed under Rule 33 is sufficient. However, no party has provided sufficient evidence to show that the %%% additional deduction is incorrect or that it should be increased or decreased.

In addition, the RESPONDENT has not shown that the values sustained at the local level for YEAR-3 and YEAR-4, as reflected on PETITIONER'S Signed Statements for these years, are incorrect. PETITIONER determined these values using Rule 33. The RESPONDENT indicated that it revised these values upward to reflect similar changes made in the audit for YEAR-1 and YEAR-2. However, insufficient information was provided at the hearing to show that the values sustained by the RESPONDENT for YEAR-3 and YEAR-4 were incorrect and that the County's revised values are a better reflection of fair market value for these two years. Based on the foregoing, the values sustained by the RESPONDENT at the local level for all years at issue should be sustained.

The Commission is sustaining the values approved at the local level for all years at issue. However, this case has been difficult to decide, and the Commission takes this opportunity to comment on the unique nature of this case and the evidence provided by the parties. The Commission's decision is based to a large degree on the multitude of defensive attacks that the RESPONDENT directed at the valuation methods found in APPRAISER-1's appraisals. While no one of these attacks was sufficient to call APPRAISER-1's appraisals into question, their cumulative effect was sufficient for the Commission to find that

PETITIONER'S appraisals are not convincing and do not reflect the fair market value of its personal property.

The Commission's decision was made more difficult because the RESPONDENT did not counter PETITIONER'S appraisals with appraisals of its own (or other similar direct evidence). This weakened the RESPONDENT'S position. Nevertheless, the RESPONDENT did provide that evidence which the Commission finds to be the most convincing unitary evidence provided by any party, specifically APPRAISER-4's revisions of APPRAISER-1's YEAR-3 and YEAR-4 income approaches. The Commission has found that the changes APPRAISER-4 made to APPRAISER-1's YEAR-3 and YEAR-4 income approaches are appropriate. These changes result in income approach values for PETITIONER'S personal property of approximately $$$$$ for YEAR-3 and $$$$$ for YEAR-4, which lend support to the values set by the County BOE. Although the decision was difficult, the Commission finds that the Rule 33 values sustained at the local level have the presumption of correctness and should remain unchanged.

Lastly, the Commission would also like to take this opportunity to further address the burden of proof associated with the YEAR-3 and YEAR-4 tax years at issue. The Commission's decision is premised on its determination that the values shown on PETITIONER'S YEAR-3 and YEAR-4 Signed Statements are entitled to a presumption of correctness. However, even if the presumption of correctness had been lost for these two years, the Commission's decision would remain unchanged. PETITIONER has not shown by a preponderance of the evidence that its proposed values are more accurate than any other value. In fact, the values shown by APPRAISER-4's revised income approaches for YEAR-3 and YEAR-4 are deemed to be more accurate unitary approach values.

Nevertheless, APPRAISER-4's unitary approach values are not considered more accurate than the individual approach values produced by applying Rule 33's percent good tables to each item of PETITIONER'S personal prope1ty. First, APPRAISER-4 made three changes to APPRAISER-1's YEAR-3 and YEAR-4 income approaches that the Commission finds to be appropriate. Yet, the RESPONDENT criticized APPRAISER-1's income approach for a fourth reason, specifically because he

did not use PETITIONER'S own revenue and XXXXX input information to estimate the PETITIONER'S FACILITY'S future income. APPRAISER-4, however, did not revise APPRAISER-1's YEAR-3 and YEAR-4 income approaches to reflect PETITIONER'S own revenue and crude input information. As a result, questions remain as to whether APPRAISER-4's revised income approaches are as correct as they could have been.

Second, the RESPONDENT'S and the INTERVENER'S witnesses testified about Rule 33 and how the percent good tables found in the rule are produced. This evidence showed that the tables produce values that are related to an item's cost and its economic life. This evidence also suggested that any obsolescence not specifically accounted for in the rule may be offset by lower values produced by the conservatively short economic lives used for the percent good tables. Furthermore, no party produced evidence to show that the value produced for any individual item of PETITIONER'S personal property was incorrect. For these reasons, the Commission would find the total values shown in PETITIONER'S Signed Statements for YEAR-3 and YEAR-4 (and which were sustained at the local level) to be more accurate values than the values that APPRAISER-4 derived for these years in his revised income approaches. As a result, the Commission's decision for YEAR-3 and YEAR-4 would not have changed if the values sustained at the local level for these years had lost their presumption of correctness.

II. PETITIONER'S Equalization Argument.

In an alternative argument to its fair market value claim, PETITIONER argued that its assessments should be lowered based upon an equalization claim. Article XIII §2(1) of the Utah Constitution requires all property to be assessed and taxed at a uniform and equal rate. Section 59-2-1006(4) provides for the Commission to adjust a property's value if the issue of equalization is raised and if the Commission determines that the subject property's assessed value deviates in value 5% or more "from the assessed value of comparable properties."

PETITIONER carries the burden of proof to establish its equalization claim. *Mountain Ranch Estates v. Utah State Tax Com'n*, 100 P.3d 1206 (Utah 2004), citing *First Nat'l Bank of Nephi v.*

Christensen, 39 Utah 568 (1911). In *Mountain Ranch Estates*, the Utah Supreme Court stated that a property "singled out" for assessment at fair market value would be entitled to relief under Section 59-2-1006(4) if its value exceeds by more than 5% the valuation of comparable properties. The Court also discussed that "intentional and systematic undervaluations of property" may also violate constitutional rights to equal protection and due process.

PETITIONER has not shown that its four comparable FACILITIES have been intentionally and systematically undervalued and that its FACILITY has been singled out for a fair market valuation. The limited testimony provided on these other FACILITIES suggests that they are valued and assessed under Rule 33 in the same manner as the assessments for the PETITIONER FACILITY. PETITIONER has not established how application of Rule 33 would intentionally and systematically undervalue the other FACILITIES while selecting PETITIONER for fair market value. Rule 33 derives its values based upon original cost, type of equipment, and age of the equipment. If values are different under Rule 33, it is because these variables are different. If these variables are different, then the properties are not comparable and the equalization claim fails.

In addition, PETITIONER has not shown that the other FACILITIES are comparable. PETITIONER argues that the four comparable FACILITIES are undervalued in comparison to its FACILITY based on a methodology that compares the properties' COMMON MEASUREMENT'S. PETITIONER'S COMMON MEASUREMENT comparison, alone, does not establish comparability. This methodology compares the processing capabilities of FACILITIES, which has not been shown to be the same for the all of the FACILITIES. As a result, the use of COMMON MEASUREMENT to compare the FACILITIES implies that they are not comparable on their face and that an alternative comparison metric other than the assessed values must be used. This methodology is also suspect because it not does show that the subject property and the other FACILITIES are similar in size or age or that they have equivalent REGULATORY control property.

The COMMON MEASUREMENT is a measurement that can be likened to a square footage measurement. The Commission would unlikely consider an equalization claim based upon a price per square foot unless evidence were available to show that the properties under consideration were highly comparable. Insufficient evidence was produced to suggest that the alleged undervalued FACILITIES were comparable to the subject FACILITY. In contrast, evidence was produced that shows the other FACILITIES are not comparable. The evidence indicates that the timing of capital investment, including AGREEMENT items, may be a significant difference. In addition, PETITIONER has made substantial capital improvements since YEAR, whereas two of the comparable FACILITIES were expected to undergo substantial renovation in the future. It is not clear that any of the comparables used by the taxpayer are sufficient comparables for purposes of equalization. For these reasons, PETITIONER has not shown that the value of its property deviates 5% or more from the assessed values of comparable properties. Accordingly, its equalization claim should be denied.

CONCLUSIONS OF LAW

1. PETITIONER has a two-fold burden of proof regarding its fair market value argument for all four years at issue. To prevail, PETITIONER must first demonstrate that the values established by the County BOE contain substantial error or impropriety in the assessments. Second, it must provide the Commission with a sound evidentiary basis for reducing the valuations to its proposed amounts.

2. The values that the RESPONDENT sustained for the four years at issue are all entitled to a presumption of correctness. As a result, the RESPONDENT and the INTERVENER also have a two-fold burden of proof regarding their request for the Commission to increase the values that were sustained at the local level for YEAR-3 and YEAR-4.

3. Utah law does not prohibit the use of a unitary appraisal approach to show that the fair market value of personal propeliy is less than the cumulative value of items derived with the Rule 33 percent good tables.

4. Nevertheless, PETITIONER has not shown that the values sustained by the County BOE, which were produced under Rule 33, are incorrect. Accordingly, PETITIONER has not met its burden to show that the any of the values sustained by the County BOE should be decreased on the basis of its fair market value argument.

5. In addition, neither the RESPONDENT nor the INTERVENER has shown that the values sustained by the County BOE for YEAR-3 or YEAR-4, which were produced under Rule 33, are incorrect. Accordingly, the RESPONDENT and the INTERVENER have not shown that the either of the YEAR-3 or YEAR-4 values sustained by the County BOE should be increased.

6. PETITIONER has not shown that the value of its personal property for any year deviates 5% or more from the assessed value of comparable properties. Accordingly, PETITIONER'S equalization claim under Section 59-2-1006(4) should also be denied.

7. In conclusion, the Commission should deny PETITIONER'S fair market value and equalization claims and sustain the values that were established by the RESPONDENT at the local level.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission declines to increase or decrease the values sustained by the RESPONDENT for PETITIONER'S personal property. Accordingly, the value of PETITIONER'S personal property for each year is as follow:

Tax Year	Commission Values
YEAR-1	$$$$$
YEAR-2	$$$$$
YEAR-3	$$$$$
YEAR-4	$$$$$

DATED this 22 day of December, 2014.

John L. Valentine, Commission Chair

Michael J. Cragun, Commissioner

Robert P. Pero, Commissioner

COMMISSIONER DIXON CONCURS

I concur on the final conclusions of value, but write separately to distance myself from what was expressed, and may be understood by those reading this order, as a general overall concern by the Commission regarding the use of the size premium.

It is my position that the Tax Commission's applicable administrative rules are silent on size premiums; the rules do not disallow consideration of the size premium. Further, the decision to use or not use a size premium should not be viewed as a policy decision, but an element of valuation, which can be considered from case to case based on the facts and the evidence given. And finally, when a taxpayer appeals a value, the Commission is seeking the best evidence of value; therefore all the information that may assist in determining the best evidence of market value should be considered and used if the preponderance of the evidence supports its use.

The Order refers to a "long-standing practice concerning the size premium". I believe the Commission can changes its practice, or policy, if the evidence in an appeal seems to indicate that the practice may be overvaluing a property. I believe prior commission rulings on centrally-assessed properties do not preclude the Commission from finding that a method, including use of a size premium, may be appropriate.

It is not clear that any party to an appeal should be denied use of a valuation method if it is not clearly stated in statute or rule that it cannot be used. If a taxpayer appeals, and other similarly situated taxpayers do not, it is not clear why the one that appealed should be denied the right to use a method of valuation that is supported by the preponderance of evidence.

If the Commission is seeking the correct value, the evidence may show that use of the size premium may be appropriate. Further the evidence may show that if the size premium is not used it may result in over-valuation.

It is possible a size premium is just another method or tool to determine value, and perhaps should not be so summarily discouraged. As in all elements of value, use of a size premium should be based on

the facts and the direct testimony and rebuttal by any witnesses, which may include financial and appraisal experts; in other words, the preponderance of the evidence should determine if use of a size premium is warranted.

For me, in the instant appeal before us, the preponderance of the evidence did not support the use of the size premium. The weight of the evidence supports that the Taxpayer is part of a larger, integrated operation of XXXXX and FACILITIES and not a stand-alone operation. Further, the facts and testimony support that the larger company with which the Taxpayer is integrated would have a market capitalization that categorizes it as a large cap company instead of a small cap company, and therefore a size premium adjustment may not be warranted.

D'Arcy Dixon Pignanelli,
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601et seq. and 63G-4-401 et seq.