

**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
MICHIGAN TAX TRIBUNAL**

COUNTY OF WAYNE, CITY OF DETROIT,
COUNTY OF OAKLAND, COUNTY OF
MACOMB, CITY OF DEARBORN,
CITY OF LIVONIA, CITY OF TAYLOR,
and the CHARTER TOWNSHIP OF VAN BUREN,

Petitioners,

MTT Docket No. 273674

v

MICHIGAN STATE TAX COMMISSION,

Tribunal Judges Presiding

Respondent,

Michael A. Stimpson

Thomas J. Hughes

Richard A. Southern

and

CONSUMERS ENERGY CO.,
DETROIT EDISON CO., and
MICHIGAN CONSOLIDATED GAS CO.,

Intervening Respondents.

OPINION AND JUDGMENT

Pending before the Tax Tribunal in the captioned proceeding is a Motion for Judgment filed August 10, 2001 by Respondent, Michigan State Tax Commission (STC), following a forty-nine day hearing in which Petitioners, local units of government, and Respondent presented their proofs (the Motion). On August 10, 2001, the Intervening Respondents (Utilities) filed a brief in support of the Motion. On September 27, 2001,

Petitioners filed a brief in response to the Motion. On November 8, 2001, the STC and Utilities filed reply briefs.

Petitioners claim that personal property multiplier Tables H and I adopted November 23, 1999 by the STC for the valuation and taxation of public utility (i) electric transmission and distribution property and (ii) gas distribution property are invalid and unlawful under Michigan law. Having duly considered the motion, the record and arguments of counsel, the Tribunal finds and concludes that the methodology used by the STC to develop and construct Tables H and I for use by local units of government as a mass appraisal tool does not constitute an error of law or the adoption of wrong principles. Petitioners have not met their burden of proving the contrary.¹

FINDINGS OF FACT

In 1999, after receiving a special appropriation from the Legislature and conducting an extensive study of the tables of personal property multipliers included in the *Assessor's Manual*, with assistance from the private contractor BDO Seidman, LLP, the STC adopted a number of new multiplier tables for the valuation of certain personal property for property tax purposes. The study was initiated because the majority of the tables in the *Manual*, including those at issue in the instant case, that are used to derive personal property tax *ad valorem* valuations in Michigan had indeterminate origins and

¹ The Tribunal notes that its opinion in this matter incorporates relevant portions of the evidentiary and legal analysis contained in the briefs filed by the STC and Utilities that the Tribunal finds well supported by the record and Michigan law and adopts as its own.

were developed prior to 1966. Exhibit P-161-A, Bates p. 013317 and Tr. Vol. 16-B, pp. 66-68, 84-85.

Most of the newly developed and adopted STC multiplier tables, covering a wide variety of personal property (Exhibit P-3), were accepted by Petitioners as being properly derived and supported (Tr. Vol. 1-A, pp. 22-23). However, Tables H and I, pertaining to public utility property, were not accepted and are the subject matter of this proceeding. Multiplier Tables H and I are to be applied to the original cost of certain public utility property that is subject to rate regulation by the Michigan Public Service Commission (MPSC). Specifically, the Tables are used to value electric transmission and distribution and gas distribution tangible personal property (collectively T&D property). These multiplier Tables are mass appraisal tools, *i.e.*, mass appraisal guidelines, to value a group of assets. Tr. Vol. 45-A, p. 70. In this action, Petitioners contend that the STC's adoption of Tables H and I constitutes an error of law or the adoption of wrong principles.

At trial, the methodology used to produce Tables H and I was explained in detail through the testimony of witnesses for both parties. As further discussed below, the Property Tax Division Staff (Staff) of the Department of Treasury valued all of the transmission and distribution property of two electric companies (Detroit Edison Co. and Consumers Energy Co.) and all of the distribution property of two gas companies (Consumers Energy Co. and Michigan Consolidated Gas Co.) and then concluded to a true cash value for each group. The sample constitutes approximately 85% of the total population of such property in the State. Tr. Vol. 46-A, pp. 66-67. Staff considered all three generally accepted methods of valuation and ultimately relied on the cost and

income approaches to value. Subsequently, the STC changed the Staff's weighting of the two valuation methods to conclude to its own indicated value for each group. The STC then produced and adopted Tables H and I, consistent with its value conclusions.

Staff gave approximately 80% weight to its income approach valuation and approximately 20% weight to its cost approach valuation in reaching its reconciled value conclusions. However, the STC gave nearly equal weight to the Staff's two valuation approaches. Mark A. Hilpert, the STC Chairman, explained that his reasons for changing Staff's conclusion were that the cost approach used was very defensible in this context and that there was no disagreement as to the values indicated using that methodology (Tr. Vol. 45-A, pp. 21-22) because it involves a straightforward analysis with little discretion (Tr. Vol. 45-A, p. 51). The income approach, in contrast, inherently has many complexities and is an approximation. Tr. Vol. 45-A, p. 24. He also explained that the cost approach valuation (based upon net book cost) is considered an anchor, in the sense that market value cannot drift far from that result. Tr. Vol. 45-A, p. 25.² Based on his analysis of the strengths and weaknesses of each approach and relevant public utility property valuation information he had gathered, Hilpert proposed, and the STC adopted, values reflecting a balanced weighting of the valuations concluded by Staff using the cost and income approaches. Tr. Vol. 45-A, pp. 26-28, 53.

A group of assessors proposed tables to the STC prior to the adoption of the new multiplier Tables H and I for T&D property described above. Petitioners' witnesses, Robert O. Vandermark, the Oakland County Equalization Director, and Gary L. Evanko,

² As Petitioners' expert witness George E. Sansoucy explained, net operating income tracks net book value (Tr. Vol. 24-A, p. 113).

the Wayne County Equalization Director, described the group (the Assessor Group) as being large (Tr. Vol. 7-B, pp. 111-112) and being comprised of (a) experts in valuation, assessment and property tax issues, and (b) among the best assessors in the State. Tr. Vol. 19-B, p. 72; 7-B, pp. 111-112; 20-B, p. 70. The Assessor Group's proposals were endorsed by the Michigan Assessors Association, the Michigan Association of Equalization Directors, the Michigan Municipal League and others. Tr. Vol. 7-A, p. 21; 8-A, p. 18. With one exception, *i.e.*, the ultimate value conclusions, the STC's actions and adoption of original cost multiplier Tables H and I with a 15-year floor reflect the requests of the Assessor Group and its many supporters.

Evanko testified that the Assessor Group's proposed tables were to be used on a mass appraisal basis (Tr. Vol. 7-B, p. 95) as a proxy for market value (Tr. Vol. 14-A, p. 31; Sansoucy 15-A, p. 39). He explained that the Assessor Group's proposal was for tables with a 15-year floor that valued property the same, based on original cost, regardless of where the property was located in the State or the extent to which the property had been used. Its proposal was for separate tables for (1) electric transmission and distribution and (2) gas distribution tangible personal property. Evanko further explained that tables do not necessarily produce a reliable estimate value for a single asset or in a single jurisdiction, but, in general, are supposed to provide fair and reasonable approximations of value. Tr. Vol. 7-B, pp. 109-110.

Subsequently, the STC adopted Tables H and I (with different multipliers) consistent with what the Assessor Group requested. Tables H and I, like the Assessor Group's proposed tables:

- (1) have separate multiplier tables for (a) electric transmission and distribution property and (b) gas distribution property (Tr. Vol. 7-B, pp. 117-118);
- (2) are based on original cost (Tr. Vol. 8-A, p. 25; 8-B, p. 51);
- (3) result in the same value for a given original cost regardless of location within the State or use (Tr. Vol. 8-A, p. 25);
- (4) contain a 15-year floor for administrative convenience (Tr. Vol. 8-A, p. 28; 20-B, pp. 41, 43);³
- (5) have multipliers all less than 1.00 (Tr. Vol. 8-A, p. 27);
- (6) are all less than the arbitrary multipliers that had been in use for decades (Tr. Vol. 8-A, p. 26; 46-A, pp. 61-62);⁴
- (7) are all based on information known prior to 12/31/99 (Tr. Vol. 8-A, p. 27).⁵

The Assessor Group and its many supporters essentially got what was asked for when the STC adopted the multiplier Tables H and I at issue in this case. The only difference between the Assessor Group's proposal and the STC's Tables is that many (but not all) of the STC multipliers are lower. Vandermark explained this difference is due to the fact that, unlike the Assessor Group's proposed tables, the values reflected by the STC Tables are affected by MPSC rate regulation. Tr. Vol. 19-B, pp. 128-129. Yet,

³ Philip L. Munck, Petitioners' witness on assessment administration (Tr. Vol. 6-A, p. 35), testified that it is proper to set a floor for administrative convenience and that you should look to assessors for advice on where to set that floor (Tr. Vol. 6-A, pp. 32-33).

⁴ The overall reduction in indicated true cash value based on the STC revisions to multipliers in 1999 was roughly 20% (Tr. Vol. 49-A, pp. 41-42), but the resulting values are still more than those produced by multiplier tables used in Ohio (Tr. Vol. 49-A, pp. 13, 21, 24-25).

⁵ Evanko testified that multipliers, like those proposed by the Assessor Group and adopted by the STC, that transfer original cost to value are known as composite multipliers. Tr. Vol. 8-A, pp. 80-81, 87.

it is undisputed that rate regulation restricts income and affects the true cash value of T&D property. Tr. Vol. 8-B, p. 17-19; 19-A, pp. 34-35, 77; 22-B, pp. 99, 100.⁶

At the hearing in this matter, 49 days of testimony were taken over the period December 4, 2000 through June 18, 2001; 177 exhibits were offered in evidence, 153 of which were admitted; and 28 visual aids were received.

CONCLUSIONS OF LAW

I

Standard Of Review/Burden Of Proof

Petitioners claim that personal property multiplier Tables H and I adopted November 23, 1999 by Respondent for the valuation of public utility (i) electric transmission and distribution property and (ii) gas distribution property are invalid and unlawful under Michigan law. By order entered June 21, 2000, the Tribunal ruled that Tables H and I are presumptively correct and that Petitioners bear the burden of proving that Respondent committed fraud, error of law or adopted wrong principles in preparing and approving Tables H and I. The June 21, 2000 order provides in relevant part:

The standard of review applicable in this declaratory judgment proceeding is set forth in the Michigan Constitution (1963), article 6, section 28 which provides in part:

In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of

⁶ It is also worth recognizing that Vandermark admitted: (1) the use of a floor is not an error where, as here, similar results are achieved in comparison to a longer table and (2) tables properly seek a value for the entire group of assets being valued, rather than the assets being valued on one line or acquired in a given year. Tr. Vol. 20-B, pp. 62-63, 72-73, 78-79, 81-82, 85, 94.

property tax laws from any decision relating to valuation or allocation.

Under the general property tax act, § 10e; MCL 211.10e, the STC is the final agency for preparing or approving the *Assessor's Manual*, including personal property multiplier Tables H and I and is charged under § 150; MCL 211.150(1) with general supervision over the assessing officers of this state. This case involves, not the assessment and valuation of a particular tax parcel, but rather the STC's final determination of the valuation methodology appropriate for use in developing and establishing multiplier Tables H and I included in the *Assessor's Manual*. The Tribunal's review in this case is confined to a determination, reviewing the evidence admitted at hearing *de novo*, whether the STC committed fraud, error of law or adopted wrong principles in preparing and approving multiplier Tables H and I.

No evidence of fraud was presented at trial.

In responding to the Motion, Petitioners first contend that *even after they have put in their entire case and Respondent has put in its case*, the Tribunal is required to treat the STC's Motion for Judgment, *made at the conclusion of the proofs*, as one for summary disposition under MCR 2.116(C)(10), and is therefore required to "view the proofs in the light most favorable to the nonmoving party, which in this case is Petitioners." Petitioners' Brief, p. 2. Thus, Petitioners argue that, because they have "met their burden of going forward with the evidence," the Motion must be denied.

Petitioners' contention is incorrect. During a 49-day hearing, both Petitioners and Respondent STC presented their proofs and called their witnesses. When the STC first indicated that it was contemplating the instant Motion at the close of Petitioners' proofs (Tr. Vol. 35-B, pp. 6-7; 49-A, pp. 61-63, 66), Petitioners indicated that they needed the opportunity to examine Mark Hilpert and Eric R. Newberg (Tr. Vol. 6-B, pp. 39-41), who

along with Jerry D. Chapman⁷ prepared the Staff valuation study and Dennis Platte, Administrator of the Property Tax Division of the Department of Treasury and Executive Secretary of the STC. Immediately after the close of Petitioners' case, the STC presented its case, calling as witnesses Platte, Newberg and Hilpert who were extensively examined by Petitioners. The Utilities did not proceed with their proofs but deferred their right to submit evidence as long as there is no need to take additional evidence for any reason. Petitioners presented all the evidence that they indicated during trial was necessary to prove their case (Tr. Vol. 6-B, pp. 39-42); accordingly, the STC Motion may be decided on its merits upon the record made.

Petitioners contend that in deciding the Motion, the Tribunal must view the evidence in the light most favorable to Petitioners as the nonmoving party. The standard of review sought by Petitioners is applicable only to motions for directed verdict and summary disposition in jury cases and to motions for summary disposition made before evidence has been presented in bench cases. This standard has not applied to motions for judgment since the adoption of GCR 1963, 504.2, the predecessor of the current MCR 2.504(B)(2). The standard applicable here, when the motion for judgment comes at the conclusion of Respondent's case, is the same standard applicable to fact finding in all Tribunal cases, *i.e.*, the finding must be supported by "competent, material, and substantial evidence." *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984). Substantial evidence must be more than a scintilla, although it may be

⁷ Petitioners' first witness was Jerry D. Chapman; due to his unavailability at trial, portions of his deposition testimony taken by Petitioners were read into the record. Tr. Vol. 1-B, pp. 1-82; 2-A, pp. 5-95; Exhibit P-370.

substantially less than a preponderance of the evidence. *Dow Chemical v Department of Treasury*, 185 Mich App 458, 463; 462 NW2d 765 (1990).

MCR 2.504(B)(2) is the rule properly applicable to Respondent’s Motion, and the Tribunal is required to make findings of fact if, weighing the evidence, it deems the record sufficient to rule on the Motion. In making such findings, the Tribunal must determine whether Petitioners have satisfied *both* the burden of presenting evidence *and* the burden of persuasion to overcome the presumptive validity of the STC’s multipliers. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 354; 483 NW2d 416 (1992). In making that determination, the Tribunal must base its findings on “substantial, competent, and material evidence.” *Antisdale, supra*. The Tribunal, weighing the evidence, finds the record sufficient to rule on the Motion.

II

Valuation Standard

In deciding the Motion, it is necessary at the outset to consider controlling law of general applicability.

A. True Cash Value And Market Value Are Synonymous; The Goal Is Determining The Usual Selling Price

“True cash value,” which is the basis for the uniform assessment of all property in Michigan, is defined in the general property tax act (MCL 211.27) to mean “the usual selling price” of the property. *First Federal Savings & Loan Ass’n v Flint*, 415 Mich 702, 704-05; 329 NW2d 755 (1982) (citing MCL 211.27). “The concepts of ‘true cash value’ and ‘fair market value’ in this state are synonymous.” *CAF Investment Co v State*

Tax Comm, 392 Mich 442, 450; 221 NW2d 588 (1974). Thus, the Michigan Supreme Court has concluded that: “[W]hile actual and reproduction costs are some evidence of value, the constitutional and statutory standard is market-based.” *First Federal*, 415 Mich at 705.

It is well recognized in Michigan that:

There are a number of methods generally accepted for calculating true cash value. Any method which is recognized as accurate and is reasonably related to fair market valuation is an acceptable indicator of true cash value.

Safran Printing Co v Detroit, 88 Mich App 376, 380; 276 NW2d 602 (1979), *lv den*, 411 Mich 880 (1981). Similarly, in *Consumers Power Co v Port Sheldon Twp*, 91 Mich App 180; 283 NW2d 680 (1979), the Court of Appeals held:

Because the concepts of “true cash value” and “fair market value” are synonymous, *CAF Investment Co v State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974), the usual appraisal method is to posit a hypothetical market to value the property from both a buyer’s and a seller’s points of view in order to arrive at a usual sales price. *A number of valuation methods, in addition to actual selling price, may legitimately be used to establish the “fair market value” of the property.* It is the duty of the Tax Tribunal to weigh the values produced from the various valuation methods and to adopt the method that approaches true cash value most closely on a “cosmic scale of truth.” This weighing process involves a considerable amount of judgment and reasonable approximation (citation omitted).⁸ (Emphasis added.)

⁸ The Supreme Court has made the following observation regarding the “considerable amount of judgment and reasonable approximation” that goes into the “weighing process” referenced above:

We point out that “consideration” of the enumerated factors under MCLA 211.27; MSA 7.27 does not require that the taxing authority determine projected income under the income capitalization approach upon any one or all of the enumerated factors (“economic” or actual income being one of those factors) so long as the valuation comports with the statute’s definition of true cash value as “usual selling price at the place where the property to which the term is applied shall be at the time of assessment, being the price which could be obtained for the property at private sale, and not at forced or auction sale.” “*Consideration*” of the various factors may well indicate that the application of some or all enumerated factors is inappropriate.

CAF, 392 Mich at 456, n6 (emphasis added).

91 Mich App at 184; see also *CAF*, 392 Mich at 450, n2 (“Any method for determination of true cash value which is recognized as accurate and reasonably related to fair market valuation will fill the statutory prescription and is an acceptable indicator of true cash value.”). Variations of the three basic valuation techniques (the sales, income, and cost approaches) may be used to determine true cash value. *Antisdale v City of Galesburg*, 420 Mich 265, 276 n1; 362 NW2d 632 (1984).

Tables H and I original cost multipliers are a derivative of variations of two of the basic valuation techniques, *viz.*, the cost and income approaches. The STC used the true cash value of T&D property derived by the cost and income approaches as the valuation standard and foundation for its construction of the Table H and I multipliers. The Tables are a mass appraisal tool designed to yield reasonable estimates of the true cash value of T&D property when applied to original cost by year of acquisition.

B. Rate Base May Not Be Used As Controlling Evidence Of True Cash Value

A central issue in this proceeding is Petitioners’ claim that the net book value of T&D property used in the Staff’s valuation study is the value attributable to it by the MPSC for rate-making purposes; and accordingly, net book value *controls* both the cost and income approach appraisal conclusions used by the STC as the foundation for its construction of Tables H and I. Thus, Petitioners argue, Tables H and I must be rejected as a matter of law as violating the general property tax act, section 27(1); MCL 211.27(1). Petitioners’ argument fails in both fact and law.

The Michigan Legislature has more specifically defined cash value as follows:

Sec. 27. (1) As used in this act, “cash value” means the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at a private sale, and not at auction sale except as otherwise provided in this section, or at a forced sale.

* * *

[T]he value attributed to the property of regulated public utilities by a governmental regulatory agency for rate-making purposes shall not be considered controlling evidence of true cash value for assessment purposes. In determining the value, the assessor shall also consider the advantages and disadvantages of location; quality of soil; zoning; existing use; present economic income of structures, including farm structures; present economic income of land if the land is being farmed or otherwise put to income producing use; quantity and value of standing timber; water power and privileges; and mines, minerals, quarries, or other valuable deposits known to be available in the land and their value.

MCL 211.27(1) (emphasis added). Because the T&D property in this case is property of regulated public utilities, the italicized portion of Section 27(1) dealing directly with such property is particularly relevant. This statute must be applied in accord with its plain language, *Rogers v Detroit*, 457 Mich 125, 140; 579 NW2d 840 (1998); and by its plain language it does not prohibit consideration of rate base in this context. The Legislature has merely provided that the true cash value of utility property may not be determined *solely* based on rate base.⁹

⁹ The Michigan Supreme Court has also held in interpreting Const 1963, art 9, § 3 (the authorization to the Legislature to provide for the determination of true cash value):

As is obvious from a reading of Const 1963, art. 9, § 3, providing the method by which the true cash value of property is determined is a legislative function. Also obvious from a reading of MCL 211.27(1); MSA 7.27(1), is that in carrying out constitutional command, the Legislature avoided specific directions and, instead, *provided for the determination of true cash value by way of broad phrasing and lists of situations to consider.*

Antisdale, 420 Mich at 275-276 (emphasis added).

It also should be noted that witnesses for both parties in this case agreed on several important points regarding this language and its import in this case:

- (1) “the value attributed to the property of regulated public utilities by a governmental regulatory agency for rate-making purposes” refers to rate base¹⁰ (Munck, Tr. Vol. 5-B, 76; Vandermark, Tr. Vol. 20-A, pp. 15-16; Hilpert, Tr. Vol. 49-A, p. 8);
- (2) rate base is not the same as net book cost (Tr. Vol. 8-A, pp. 88-89; 8-B, pp. 47-48; 14-A, pp. 44-45; 20-A, pp. 14-15);¹¹
- (3) in valuing T&D property, the STC and Staff did not use rate base (Tr. Vol. 14-A, pp. 55-56, 68-69; 20-A, p. 22;); and

¹⁰ The difference between rate base and net book cost is summarized below. *See, e.g.*, Exs. P-1, pp. 6-9; P-2, pp. 6-9. In summary, rate base does not equate to net book cost; rate base is comprised of several components (including net book cost) and determined at a rate hearing at a given point in time; rate base, unlike net book cost, is then fixed until another rate hearing is held (Tr. Vol. 46-A, pp. 37-42). The Michigan Public Service Commission (MPSC) sets the rates gas and electric utilities are allowed to charge at a level to allow investors in utility property an opportunity to earn a reasonable return on their investment. The MPSC determines, as of a particular point in time, each variable in the following basic equation, through an expensive and time-consuming litigation proceeding called a “rate case”:

$$\text{Rates} \times \text{Volumes} = (\text{Reasonable Rate of Return} \times \text{Rate Base}) + \text{All Other Costs (such as salaries, rent, yearly depreciation).}$$

Generally, rate base is the utility’s investment in plant and equipment, at original cost less depreciation, plus working capital. *See* Newberg Tr. Vol. 37-A, p. 91; Sansoucy Report, Ex. P-348, p. 19; Tr. Vol. 24-A, pp. 67-77. As demonstrated by the above, because such costs as salaries, depreciation and rent do not earn a rate of return, a company’s opportunity for income or profit is limited to a return on rate base. However, only those property investments that are found by the regulators to be reasonable and prudent are allowed to be recovered from customers through allowed rates. *Id.* *See* the examples of MPSC rate-making in Ex. P-379; In the matter of the application of Michigan Consolidated Gas Company, MPSC Case Nos. U-10149 and U-10150, October 28, 1993; and In the matter of the application of Consumers Power Company, MPSC Case No. U-10755, March 11, 1996.

¹¹ A utility’s rate base and its net book cost are different. *See* Hilpert Tr. Vol. 45-A, p. 51 and 49-A, pp. 8-10 and Munck Tr. Vol. 5-B, pp. 75-77. Rate base is the portion of net book cost that the MPSC believes is appropriate to use for setting rates as of a specific point in time (Tr. Vol. 1-A, p. 38; 5-B, pp. 76-77; 6-A, p. 9). It can deviate from net book cost as soon as retirements, additional depreciation or investment occurs. *Id.* Because rate cases are time-consuming and expensive, they are filed only every several years by a company (when it needs to recover the costs of additional investment in rates, or has other cost increases) or by the regulators (when they believe the company is earning in excess of its allowed return). Ex. P-1, pp. 6-9; Ex. P-2, pp. 6-9.

(4) the STC's concluded values exceed rate base (Tr. Vol. 14-A, pp. 42-43, 46-50, 20-B, pp. 6-7).

C. Petitioners Propose An Interpretation Of MCL 211.27 Contrary To Its Express Terms – Nothing Prohibits Use Of Rate Base As Evidence Of True Cash Value

Petitioners suggest that MCL 211.27(1) should be read as if the word “controlling” does not appear or has no meaning – *i.e.*, the statute should be read to say: “the value attributed to the property of regulated public utilities shall not be considered ... evidence of true cash value for assessment purposes.” But the word “controlling” is in the statute and must be given effect. See, e.g., *Tiger Stadium Fan Club, Inc v Governor*, 217 Mich App 439, 457; 553 NW2d 7 (1996) (every word in a statute must be given meaning). Further, if the Legislature had actually intended to preclude an assessor from considering rate base, it knew how to do so. In the very next subsection of MCL 211.27, the Legislature provides:

- (2) The assessor *shall not consider* the increase in true cash value that is the result of expenditures for normal repairs, replacement, and maintenance in determining true cash value of property for assessment purposes until the property is sold.

The Legislature chose not to include rate base in its express prohibition on consideration of certain factors. This express listing must be considered exhaustive, which is another fundamental principle precluding Petitioners' reading of this statute. See, e.g., *Jennings v Southwood*, 446 Mich 125, 142; 521 NW2d 230 (1994) (expression of one thing in a statute implies the exclusion of other, similar things not listed). Clearly, MCL

211.27(1), by its plain terms, does not prohibit consideration of rate base.¹² In fact, the statutory language in section 27(1) addressing valuation of public utility property does not say assessors “shall *not* consider” anything. Thus, Petitioners’ interpretation of Section 27(1), contrary to its plain meaning, is rejected.

D. It Is Well Established And Undisputed That Evidence Of Value That Is Not “Controlling” May Nonetheless Be Considered

The Michigan courts have also made clear that even evidence that cannot be “controlling” evidence of a property’s value may be “considered” in determining the usual selling price of the property. As the Michigan Supreme Court explained in *Antisdale, supra*, the sale of the subject property itself is not controlling evidence of value:

The rule in Michigan, as in many other states, is that the selling price of a particular piece of property is not conclusive as evidence of the value of that piece of property. See *Fisher-New Center Co, supra; Cleveland-Cliffs Iron Co v Republic Twp*, 196 Mich 189; 163 NW 90 (1917).

420 Mich 265, 278 (citations omitted).

It is clear, however, that although a fact such as the sale price of the subject property may not be controlling evidence of value, it can be considered as relevant evidence:

While the Tribunal correctly noted that the sale price of a particular piece of property does not control its determination of the value of that property, the Tribunal’s opinion that the evidence “has little or no bearing” on the property’s earlier value suggests that the evidence was rejected out of hand. Such cursory rejection would be erroneous.

¹² That MCL 211.27(1) does not prohibit an assessor from considering anything is further proved by the very same sentence that addresses rate base. That sentence also addresses sales or dispositions by the state of land acquired for delinquent taxes. It states such sales cannot be considered controlling evidence of value. This clearly cannot mean that after investigation of the facts surrounding a sale, if an assessor determines the actual sale is the best indicator of true cash value of the property, it cannot be considered and used at all.

Jones & Laughlin Steel Corp v City of Warren, 193 Mich App 348; 354; 483 NW2d 416, 419 (1992) (emphasis added) (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984); see also *Alberts v City of Orchard Lake*, unpublished opinion of the Court of Appeals, decided January 31, 1997 (Docket No. 187882) at 3 (“We note that while the purchase price of a particular piece of property constitutes evidence of its value, it is not conclusive.”))

Under Petitioners’ argument, because the sale price of a subject property (like rate base for public utility property) is not controlling evidence of value, the sale price (like rate base) may not even be *considered* as evidence of true cash value. While this argument lacks logic and violates the fundamental rules of statutory construction, it also is refuted by Petitioners’ own witnesses, Vandermark and Frederick W. Morgan, a City of Detroit Assessor. Vandermark repeatedly agreed that even though Michigan law prohibits treating a sale price as controlling evidence of value, it is not an error to give great weight to the sale price and even conclude to true cash value similar to or even equal to the sale price. Tr. Vol. 20-A, pp. 39-43; 31-B, p. 101. Morgan also agreed that both a sale of a subject and rate base itself can be considered as evidence (but not controlling evidence) of true cash value (Tr. Vol. 32-A, pp. 73-74). Even more on point, Vandermark agreed that nothing precludes rate base from being considered in determining true cash value (Tr. Vol. 20-A, p. 16).

E. The STC And Staff Did Not Use Rate Base To Value T&D Property

Rate base, which is “the value attributed to the property of regulated public utilities by a governmental regulatory agency for rate-making purposes,” MCL 211.27(1),

was not used by the STC or Staff in valuing T&D property. Newberg (of the Staff) testified that he did not use it. Tr. Vol. 44-A, p. 28; 46-A, p. 44. Even Sansoucy agreed that the STC did not use rate base. Tr. Vol. 14-A, pp. 54-56.

Not only did the STC not use rate base – let alone use it as “controlling” evidence of value – but Staff investigated and then *explicitly rejected* rate base as a surrogate for value. See Ex. P-3; Ex. P-106, (“I [Newberg] have concluded that BDO Seidman’s recommendation with respect to the adoption of regulatory rate base for the valuation of locally assessed utility property should not be adopted.”); and Ex. R-7a, Introduction (Newberg’s report).¹³

F. Even If The Statutory Reference Were To Net Book Cost, Rather Than Rate Base, Net Book Cost (Which Was Considered And Used By The STC) May Still Be Considered In Determining True Cash Value

Despite the plain meaning of the statute and testimony to the contrary, Petitioners have argued that the MCL 211.27(1) prohibition regarding controlling evidence does not relate to rate base. Petitioners apparently argue that the prohibition relates, instead, to net book cost or historical cost less depreciation (HCLD).¹⁴ Thus, Petitioners’ claim appears to be that the STC erred in using “net book cost” as controlling evidence of value. This argument is clearly flawed, both for the reasons discussed above and because, even if Petitioners were correct in asserting that the statute refers to net book cost (though it does not), the STC did not rely on net book cost as controlling evidence. As the record clearly

¹³ Respondent’s own admissions documented in subsections B and E, above, demonstrate that in valuing the T&D property at issue the STC and Staff not only did not use rate base, but concluded to values that exceed rate base.

¹⁴ For purposes of this opinion, historical cost and original cost are synonymous.

reflects, and as is discussed below, the STC also relied on the income approach to value the subject property.

III

Unit Valuation

The Staff valuation study used by the STC as the foundation for the construction of Tables H and I incorporates unit valuation techniques to derive cost and income approach appraisal conclusions for T&D property. Petitioners argue that the use of unit valuation techniques is not “statutorily allowed in Michigan” to estimate the value of locally assessed public utility T&D personal property. Petitioners’ Brief, pp. 33-36. The Tribunal disagrees.

A. Property That Functions As An Integrated Whole May Be Valued As A “Unit,” Regardless Of Whether Such Property Crosses A Taxing Jurisdiction Boundary

A unit appraisal is the valuation of an integrated group of assets functioning as an economic unit as one thing, without reference to the independent value of the component parts. Tr. Vol. 1-A, p. 24; 49-A, pp. 40-41. When property is valued as a whole, the resulting value includes the contributing value of its parts. Tr. Vol. 49-A, p. 40. For example, when a house is valued as a unit, that value includes the contributing value of the walls, roof, furnace, etc. Tr. Vol. 49-A, p. 41.

Current appraisal literature outlines the issue clearly in terms of the principle of contribution:

The principle of contribution states that the value of a particular component is measured in terms of its contribution to the value of the whole property or as the amount that its absence would detract from

the value of the whole. The cost of an item does not necessarily equal its value. A swimming pool that costs \$10,000 to install does not necessarily increase the value of a residential property by \$10,000. Rather, the pool's dollar contribution to value is measured in terms of its benefit or utility in the market. The swimming pool's contribution to value may be

- Higher than its cost (if properties with swimming pools are in very high demand in the market).
- Equal to its cost.
- Lower than its cost, though still contributing positively to value. This is the most common situation, *i.e.*, more than zero but less than its cost.
- No contribution to value. Adding a swimming pool could have no effect on the value of that property in that market at that time.
- Less than zero. The swimming pool may need to be removed at an additional cost for the property to reach its highest and best use.

The contribution of the existing improvements may not be in proper balance with the total property. Especially in transition areas, as a property's present use may underutilize the land. Nevertheless, an existing, less-than-optimal use, called an *interim use*, will continue until it is economically feasible for a developer to absorb the costs of converting the property, either by razing and replacing the existing improvements or by rehabilitating them.

The Appraisal of Real Estate, 12th ed., Appraisal Institute (2001), pp. 40-41.

Clearly valuing properties as a functioning unit rather than component parts comports with the principle of contribution and generally accepted appraisal practice.

Here, the STC valued T&D property as a whole, *i.e.*, as a unit, and not as separate or severed poles, wires, and pipes. It is significant that Petitioners' own witnesses repeatedly agreed that valuing each of the two different types of T&D property as a unit was not an error (Tr. Vol. 8-A, p. 32; Vol. 17-A, p. 81; Vol. 17-B, p. 18; Vol. 20-A, p. 77; Vol. 30-A, pp. 80, 88, 97; and Vol. 34, p. 114). Sansoucy values public utility assets

“all the time” in multiple communities and then allocates such values (Tr. Vol. 22-B, pp. 43, 49-50).

Two recent Court of Appeals cases also support valuing property as a unit. In *Great Lakes Division of National Steel Corp v City of Ecorse*, 227 Mich App 379, 420-421; 576 NW2d 667, 686 (1998), an integrated steel mill crossing taxing jurisdiction boundaries was valued as an integrated whole. In upholding the Tribunal’s method, the Michigan Court of Appeals stated:

An appraiser cannot correctly and accurately determine the true cash value of a property by appraising only half of a facility that is “integrated” and without question dependent upon all interrelated functions. That would be analogous to valuing a car for resale based upon the individual parts. By selling a potential buyer the shell, based on its value, and separately selling the chassis, based on its value, and finally the engine and other components, a \$20,000 car would be worth substantially more.

127 Mich App at 420-21 (emphasis added); see also *Consumers Power Co v Port Sheldon Twp*, 91 Mich App 180, 185; 283 NW2d 680 (1979) (“This income approach to property valuation [valuation as a “unit” based on its capitalized earnings] has been approved by the Michigan Supreme Court.”).

Contemporaneously with *Great Lakes*, the Court of Appeals also upheld the Tribunal’s unit valuation of over 327 gas wells, related pipelines, and the centralized processing equipment connected to the wells in *Ward Lake Drilling, Inc v Charlton Township*, 9 MTT 325 (1996).¹⁵ The taxpayer attempted to have the property valued

¹⁵ In that case, Newberg, the former manager of the Department of Treasury Utility Valuation Section, was an expert witness for the Respondent Township. He testified in the utility multiplier table trial here that the property in *Ward Lake* was valued as an economic unit, a complete gas processing facility servicing numerous interconnected wells, despite the fact that some of the property crossed taxing jurisdiction boundaries. Tr. Vol. 37-A, pp. 34-35.

based on a component, rather than a unit, basis. The Tribunal rejected that approach and valued the property as an economic unit:

The Tribunal finds the above-ground personal property is infrequently sold in the market. A sale may take place when a well goes dry, equipment fails or equipment was improperly installed. *The Tribunal finds that under normal conditions, personal property similar to the subject property in this case, is sold in working order as part of an operating well or central processing facility.*

9 MTT at 337 (emphasis added).

The Michigan Court of Appeals affirmed the Tribunal's unit valuation method:

[W]hile a market or sales comparison approach may be appropriate in cases such as this, *the appropriate market would consist of comparable equipment sold as a unit in connection with the sale of an operating well.*

Ward Lake Drilling, Inc v Charlton Township, unpublished opinion of the Court of Appeals, decided May 12, 1998 (Docket No. 197218) (emphasis added).

When utility property has not been valued by the STC tables, it has been the practice in the state of Michigan to value it as a unit, even though there is no statute requiring valuation on that basis. For example, in *Michigan Bell Tel Co v Department of Treas*, 6 MTT 392, 1990 WL 57262, p. 2, the Tribunal valued the telephone company's property as a unit:

The unit valuation method has become a generally accepted mode of valuation for *utility property*. Many recent decisions in other jurisdictions have given interpretations of its meaning in the context of a particular state's own statutory and constitutional framework.¹⁶

¹⁶ Petitioners correctly note that *Michigan Bell* concerned property centrally assessed. However, the statute pertaining to the central assessment of railroad and telephone property, MCL 207.1 *et seq.*, does not specify the methods to value such property. For example, MCL 207.9 states:

For the purpose of arriving at the true cash value and taxable value of the property on the assessment roll, the state board of assessors may personally inspect the property assessed, may consider the reports filed under this act or reports and returns filed in the office of any officer of the state or in the office of any governmental agency, and *any other evidence or information obtained or possessed by the state board of assessors.*

See also *Texas Eastern Transmission Corp v Tracy*, 78 Ohio St 3d 83; 676 NE2d 523 (1997) (taxpayer's unit valuation of multi-state pipeline property allocated to property in state of Ohio provided better evidence of true (market) value of Ohio property than did state's reliance upon a statutory cost formula); *Tennessee Gas Pipeline Co v Board of Assessors*, 2000 Mass Tax LEXIS 83 (Mass Appellate Tax Bd, October 19, 2000) (The Board held it was appropriate to value an interstate pipeline company as a unit and allocate a portion of that value to the property in the local taxing jurisdiction citing, among other authorities, Ring & Boykin, below); *General Motors Corp v Cuyahoga*, 1995 Ohio Tax LEXIS 120 (Ohio Board of Tax Appeals, January 27, 1995) (highest and best use of an automotive manufacturing facility was a single economic unit, component analysis inappropriate); *Pacific Power & Light Co v Department of Rev*, 10 Oregon Tax Reporter 417; 1987 Ore Tax LEXIS 63 (Ore Tax Ct, March 19, 1987) ("since plaintiff's electric operations stretch across six states, the accepted method is to value plaintiff's electric utility property as an integrated operating unit and then allocate a portion of that value to Oregon"); *General Dynamics Corp v Assessors of Quincy*, 388 Mass 24, 26-27, 34-35; 444 NE2d 1266 (1983) (locally assessed shipyard valued as a whole and allocated between two municipal taxing authorities).

Simply put, nothing statutorily requires the unit approach or prohibits the State Board of Assessors from individually valuing and adding up the values of railcars, rails, poles, wires, switch gear, or whatever else railroads and telephone companies own. However, the unit method is used, instead, because it is the most sensible, appropriate method to value integrated property at its highest and best use.

The validity of valuing public utility property as a unit is supported by numerous academic authorities and appraisal standards. As explained in the Ring & Boykin valuation textbook:

The properties owned by railroads and public utilities, although composed of separate and identifiable assets such as locomotives, freight cars, railroad tracks, right-of-ways, buildings, power plants, pipelines, transmission lines, and so on, are operationally interdependent and the value of one part cannot effectively or accurately be estimated except as a part of the unit value of the enterprise as a whole. *Realization of this fact paved the way for the now generally accepted and court-sanctioned practice of appraising railroad and public utility property as an operating whole under the “unit rule.”*

Ring & Boykin, *The Valuation of Real Estate*, (3d ed., 1986), p. 419. Moreover, the State of Nevada, in explaining to Mark Hilpert why certain utility property should be valued as a unit:

What is unit appraisal? Unit appraisal means valuing an integrated group of assets functioning as an economic unit as “one thing,” without reference to the independent value of the component parts. The logic of this concept is that informed buyers and sellers will most likely buy or sell a viable operating unit as “one thing.” Centrally assessed properties are usually thoroughly integrated in operation and construction. *For instance, the value of a length of copper wire in an electric system lies not in the fact that copper has a market as scrap metal but that the wire is a part of a thoroughly complete and integrated electric system.*

Ex. R-31h, Nevada response to Hilpert request, *Unit Valuation in Nevada* (emphasis added).¹⁷

¹⁷ See also California response to Hilpert request, Ex. R-31n:

The unit concept means that a collection of tangible assets functioning as an operating unit are to be appraised as a whole without reference to the separate value of the component parts. Value accrues to the assets because of their ability to generate benefits as an operating unit.

See also Appraisal of Railroad and other Public Utility Property For Ad Valorem Tax Purposes, Report of the Committee on Unit Valuation, National Association of Tax Administrators, p. 14 (1954):

[A] “unit appraisal” - . . . is an appraisal of an integrated property as a whole without any reference to the values of its component parts. Such an appraisal is to be distinguished on the

Thus, unit valuation is a matter of proper appraisal practice to find true cash value of an integrated whole and does not constitute error of law or the adoption of wrong principle.

B. Unit Valuation Does Not Mean Central (State Made) Assessment

It is apparent from the above cases that the valuation of property as an economic unit has nothing to do with central assessment; *i.e.*, assessment by the state as opposed to local assessing unit. The steel mill in *Great Lakes, supra*, and the gas wells in *Ward Lake, supra*, were all valued by local assessors. If property sells as an economic unit, then it can be valued as such, either by local assessors or state assessors. Hilpert Tr. Vol. 45-A, pp. 64-66. As Hilpert explained, local assessors value property as a unit all the time – homes are valued without calculating the separate value of the roof, walls or appliances. Tr. Vol. 49-A, pp. 40-41. Obviously, a home valued and assessed as a unit does not preclude local assessment.

C. The STC’s Valuation Of Public Utility Property As A Unit Does Not Constitute An Error Of Law Or Adoption Of Wrongful Principle

The STC concluded that the unit that would sell was not poles, wires, or pipes in a single taxing jurisdiction but an integrated system that crossed tax jurisdiction

one hand from a “fractional appraisal” (an appraisal of part of an integrated property without reference to the value of the other parts or of the property as a whole) and on the other hand from a “summation appraisal” (an appraisal of a property derived by adding together two or more fractional appraisals).

Finally, Uniform Standards of Professional Appraisal Practice, Standards Rule 1-4 (Specific Requirement) states:

In developing a real property appraisal, an appraiser must collect, verify, and analyze all information pertinent to the appraisal problem, given the scope of work identified in accordance with Standards Rule 1-2(f).

* * *

An appraiser must analyze the effect on value, if any, of the assemblage of the various estates or component parts of a property and refrain from valuing the whole solely by adding together the individual values of the various estates or component parts.

boundaries. Tr. Vol. 46-A, pp. 75-76. For this reason, it is undisputed that utility appraisers value T&D property as an economic unit (Newberg Tr. Vol. 44-A, p. 26), the same way the STC valued gas transmission property for which it adopted new multiplier tables in 1997 (Tr. Vol. 49-A, p. 7).

Petitioners submitted no evidence of the prices from piecemeal sales of used wires, pipes, poles, and transformers severed from the operating system. In fact, quite to the contrary, Vandermark admitted that transformers and electric services in buildings are (and should be) valued as part of the unit to which they are attached (*i.e.*, the building). Tr. Vol. 21, pp. 9-24, 49-65. He further testified that transformers connected to machinery are similarly valued as a part of the unit to which they are attached (*i.e.*, the machine). Tr. Vol. 31-B, pp. 8-11. Nor did Petitioners show that any piecemeal sales of wire, pipes, poles or transformers in the aggregate would lead to higher values than the value established under the STC's tables.¹⁸

Also, there was no evidence submitted of T&D property in just one taxing jurisdiction's boundaries being cut off from the integrated operating system of which it is a part and being sold as a subsystem within that taxing jurisdiction's boundaries. There is good reason for this lack of evidence: T&D property is not designed to operate solely in a taxing jurisdiction boundary. As Sansoucy states in his report:

Transmission property especially, but also distribution property to a significant extent, is not constructed with the primary purpose of following political or tax jurisdiction boundaries. They are designed to transmit and distribute electricity or gas according to an area-wide plan based on physical

¹⁸ There is a market for used or scrap wires, pipes, poles and transformers, but use of prices from such markets result in values *lower* than under the STC's tables. Such piecemeal sales do not represent the highest and best use for the property. Sansoucy agrees there is a very active used equipment market and scrap metal market for towers, but Petitioners do not want values based on these prices. Tr. Vol. 9-B, pp. 37-38.

topography, regional demographics, and the economics of rights of way. Transmission poles and wire or pipes may intersect a corner of a town, or even traverse its entire length, without being tapped for distribution in the town, which then contributes nothing to its income yet hosts the physical apparatus; to some extent this can be true of distribution wires and pipes also. Electrical substations or gas line pump, valve and cleaning houses may be located across the town line from the community they primarily serve, in which case the town contributes income value to the assets in a neighboring jurisdiction.

Ex. P-348, p. ii; see also Munck Tr. Vol. 5-B, pp. 9-10 (T&D works as a unit); Evanko Tr. Vol. 8-A, p. 50 (it is a matter for the assessor's judgment as to whether to value a whole crossing jurisdictional lines and then allocate); Vandermark Tr. Vol. 20-A, pp. 44-46 (T&D lines may not even be "tapped" by any customers in the town they traverse; distribution substations may not be located in their service areas); Sansoucy Tr. Vol. 24-B, p. 25 (each component of a T&D system relies to some extent on all other components of the system).

Petitioners incorrectly claim that the Utilities argue "that the whole is always the sum of the parts." Brief, p. 34. But the Utilities make no such argument. Rather, under appraisal theory, the whole may be worth more or less than the sum of the component parts. The Tribunal agrees with the STC that, under the facts here, the whole is worth more than the sum of component parts (*i.e.*, the highest and best use of the property is as an integrated system).

Petitioners have submitted no evidence to the contrary. Such evidence, for example, would be evidence of utility systems being broken up into component parts with the pieces being sold separately. No such evidence was submitted. Petitioners' proposed sales all show property continuing to operate as either the same integrated whole under different ownership or incorporated into another larger integrated operating unit. Exs. R-

14a (Beck); R-23 (Sansoucy); P-348 (Sansoucy Appendices); P-356 (merger data admitted for illustrative purposes). Thus, the evidence shows that the whole is worth more than the component parts, so that the STC properly valued the property at its highest and best use, consistent with Michigan law.

IV

Sales Comparison Approach

The foundation for the STC's construction of Tables H and I is the Staff valuation study of T&D tangible personal property. The Staff valuation study relies on two of the three generally accepted methods of valuation, the cost and income approaches; the third approach, the sales comparison approach, was considered but was not used. Staff and the STC found that the income and cost approaches were valid, reliable indicators of T&D property true cash value. Petitioners contend that the sales comparison approach was not seriously considered and its nonuse adequately explained; thus, the STC committed an error of law and adopted a wrong principle. The Tribunal disagrees.

Petitioners did not prove a sales comparison approach should, or even could, have been used as a reliable indicator of value for the Michigan T&D property involved here. They never took a single allegedly comparable sale and adjusted it to arrive at a value indicator useful for constructing a mass appraisal tool for T&D tangible personal property. No allegedly comparable sale involved only T&D tangible personal property. Significantly, Petitioners admitted that adjustments to such alleged comparables are inherently subjective and speculative. Tr. Vol. 26-B, pp. 19, 27-29, 32, 64-65, 72. Sansoucy also admitted that even in 1997, the sales comparison approach was rarely used

to value public utility property. Tr. Vol. 22-B, p. 97. He claimed a sales comparison approach should be done, but did not perform one.

Petitioners' witness, Evanko, conceded that there are many intangible assets owned by utility companies – including some types of contracts, customer lists, and a work force in place – the value of which cannot legally be attributed to T&D property (Tr. Vol. 8-A, pp. 61-62, 67-68). Newberg agreed with Sansoucy that there were circumstances under which use of the sales comparison approach was not proper because of the substantial adjustments required and the level of confidence the appraiser had in the adjustments. Tr. Vol. 25-A, pp. 25, 29; 44-A, pp. 29-31.

Newberg's and Hilpert's judgment that the admittedly subjective adjustments required could not be made in a manner that would allow them to have confidence in the result is more credible than Sansoucy's unsupported claim to the contrary. It is not an error of law not to do a sales comparison approach, which, on the record in this case, is apparently infrequently, if ever, done; particularly given Petitioners' failure to demonstrate that it could be done in this case and given the two value conclusions based on methods routinely used by appraisers of public utility properties.

A. The Sales Data Submitted To The STC

The sales data delivered to Staff and the STC by Petitioners was contained in two documents, the R.W. Beck Report, Ex. R-14a¹⁹, and the original Sansoucy Report dated November 2, 1999, R-23. Tr. Vol. 37-A, p. 43. Nothing identified the property included in the sale in addition to the type of T&D property subject to the tables. No sale was

¹⁹ Petitioners submitted no witness to sponsor the Beck report. The Tribunal allowed it (Ex. R-14a and b) into evidence on the STC's motion (not Petitioners') strictly as an indicator of information provided to the STC – not for the truth of any matters asserted therein. Tr. Vol. 35-B, pp. 57-62.

identified by the territory served by the utility. The best that could be done was to discern locations from the names of the parties and states, if given. Only three involved properties in Michigan – an extremely small sample compared to the over \$6.8 billion of property directly valued by Staff and STC through the cost and income indicators. Not a single sale identified the motivations of the buyers and sellers of the property, nor financing terms. None was “qualified” by the complicated process Sansoucy described in relation to Ex. P-356. Tr. Vol. 10-A, pp. 8-9.

Nevertheless, after receiving this data, Chapman and Newberg met and considered whether they could develop a reliable indicator of value from such sales data. Tr. Vol. 41-B, pp. 48-54. They had the experience to know it was highly doubtful, but Newberg investigated the data further by reviewing industry publications to learn more about the companies involved. He concluded he could not develop a meaningful indicator of value as the property was old, most sales were outside the Midwest in states with which he lacked familiarity, and were small segments of systems. He lacked the information to “get behind the transactions,” such as whether stock was involved, the motivations of the buyers and sellers, and whether non-utility property was involved. Tr. Vols. 41-B, pp. 50-58; 42-A, pp. 30-33.

Newberg explained the need to be familiar with the specific regulatory environment and various other factors affecting such a sale in order to use it to value a property subject to a different regulatory system:

A. It’s not a question of what information I had, it was what information I didn’t have regarding any of these particular sales. I might illustrate by starting with verification. There’s bare bones data here regarding, for example, Gulf States Energy [see Entergy/Gulf States merger, Ex. P-348, p.

A-2], bare bones information. I know the date of sale, I know the apparent price, a few additional items, and then that's basically it.

The problem I would have, or had, starting at that point, would be verification of the information. I would have to go to a party familiar with the transaction, interview them and find out what decisions and what considerations entered their mind regarding this sale, what did they consider the primary factors.

For example, Gulf States, being a southern company, operates under different Public Service Commission, mostly different Public Service Commission rules than are in Michigan. This sale occurred in 1993; I'm trying to work with 12/31/97. So what I would have to do is know what was in the buyer's mind, for example, the degree of rate regulation would be in that Gulf States territory and somehow relate that to what regulation - level of regulation there would be in Michigan as of 12/31/97.

That's a consideration – one consideration that a buyer would have to – would certainly take into account if the degree of regulation in the South, for example, were quite loose, where rates weren't tightly controlled. You could come up to Michigan where they are tightly controlled, and how would he make that adjustment? I'm not – I don't know how I would do that.

How about prospects for growth in the area where Gulf States is located. And Energy's [sic] mind, what was their – was there potential for revenue growth and income growth there? How did that relate at 12/31/93? How would that relate to 12/31/97? Questions of that nature, pretty basic questions.

And when you get to those, how do you make the adjustments? I don't think I could make them. I haven't seen anyone else attempt to value utility property through the direct sales comparison approach either, to this day.

Tr. Vol. 44-A, pp. 54-56.

Thus, to make adjustments Newberg would have to become an expert in the regulation in all of the states in which Gulf States and Entergy operated. He would need to know about growth and economic conditions in these states involved in the sale.²⁰ He would need to know what value the parties placed on just the T&D property. To do the

²⁰ Sansoucy acknowledged that the way states regulate their utilities varies (Tr. Vol. 24-B, p. 47).

Staff valuation study, Newberg only needed to value T&D property, but to analyze a merger, *all* property sold would need to be valued.

Analyzing *each sale* would involve far more work than was required for the entire T&D study in order to even *hope* to get meaningful results. To isolate T&D value from the transaction, Staff's cost and income approaches would not only need to be replicated for the T&D property, but for the other regulated and unregulated, tangible and intangible, assets involved in the sales.²¹

Newberg testified he has not seen anyone to this day use a sales comparison approach for tangible utility property. Tr. Vol. 42-A, p. 34. He knows of no expert utility appraiser who uses it. Even if Sansoucy were an expert in this area, he did not show how it should be used. Tr. Vol. 37-A, p. 46. Newberg searched for appraisal texts to explain how a sales comparison approach could be done for utility property, especially how to adjust for differences in two utilities because no two are alike,²² but found no guidance. *Id.* at 31. As noted above, even Sansoucy claimed such approach was rarely used to value such property. Tr. Vol. 22-B, p. 97.

²¹ This fact was proved from the testimony of Petitioners' witnesses – as will be detailed below.

²² Staff has independent expertise in valuing utility and similar property. For example, it has an obligation under the Michigan statutes to determine each year the true cash value for property tax purposes of all railroad and telephone company property. See MCL 207.1 through MCL 207.20. Newberg testified he had valued 25 railroads per year and about 100 phone companies per year. Tr. Vol. 36-B, p. 101. He had some experience in finding some similarities for short line railroads sufficient to attempt a sales comparison approach, but not for large, multi-state systems with multiple routes. Tr. Vol. 42-A, pp. 33-36. Newberg also appraised power plants as a contract assessor for local jurisdictions. He has reviewed sales information for generating plants but, like Sansoucy, does not believe the information can be used reliably. Tr. Vols. 42-A, p. 27; 25-A, pp. 18-25.

Newberg confirmed that no two T&D utilities could be alike. Newberg further agreed no two utilities are alike, while commenting upon some of the many reasons set forth in the WSATA Manual (Ex. P-190, Bates 25846) why utility appraisers do not use the sale comparison approach. Tr. Vol. 42-A, pp. 33-36.

The Western States Association of Tax Administrators (WSATA) Appraisal Handbook (Exhibit P-190) indicates that the sales comparison approach should be considered wherever applicable and not be rejected outright; however, nowhere does it state that it can be effectively employed without current comparable sales available for use.

[Market value] implies that the sales comparison approach should be the preferred valuation method when comparable sales data are available. For many years appraisers of railroads and public utilities have disregarded the sales comparison approach because of an alleged paucity of data. Most financial consultants, and many appraisers and tax administrators, have maintained that comparable sales cannot be employed to estimate the unitary values of railroads and public utility properties. They generally argue that (1) no one has used the sales comparison approach to value public utilities and railroads, (2) there is not enough market data available to develop reliable indicators, (3) it's too time consuming and difficult to obtain data, and (4) appraisers cannot make comparisons between railroads or utilities because no two are similar to each other in all respects. Some appraisers even argue that the sale price of the subject itself is an unreliable indicator because of the difficulty of removing the value of non-unitary property from the aggregate sale price. However, these reasons do not justify outright rejection of the almost universally accepted "preferred approach" for the valuation of property. ...

Application of the sales comparison approach involved deriving an indicator of unitary value by comparing the subject property, *e.g.*, a railroad or utility, with *similar properties which have been sold recently* or are currently available for sale. *A critical element in the process involves determination of the degree of comparability between the subject property and the sold properties.*

Ex. P-190, Bates pp. 25846-25847 (emphasis added). Further, no appraisal text, including WSATA, *supra*, would advise using old non-comparable sales as value inferences. It is not surprising that Newberg, who appraises utilities and railroads frequently, claims never to have met a practicing utility appraiser who uses the sales comparison approach.

Based on his knowledge and experience, Newberg concluded a reliable sales comparison approach could not be done even if he had *every* fact concerning the alleged comparable sales. Tr. Vol. 44-B, pp. 21-22. Again, ultimately, he would need to somehow extract the sales price of *just* the T&D property and adjust that sales price for the T&D property that sold to render it comparable to Michigan T&D property. With Newberg's experience with utility property, he knew it could not be done with any level of reliability. Nor, of course, would a sales comparison approach have anywhere near the reliability of his income and cost approaches, which were based directly on over 80% of the property subject to the Tables. Tr. Vol. 44-A, pp. 55-56; 44-B, p. 22.

Hilpert questioned Newberg and Chapman concerning the sales data and agreed with them that there were too many issues concerning adjustments, including those that would be necessary for sales date, inclusion of intangible property value, inclusion of non-regulated property, and differences in regulating agencies. Tr. Vol. 45-A, pp. 57-58. In the exercise of the STC's best judgment, based on an appropriate consideration of the relevant data, it was decided that a sales comparison approach would not materially contribute to the accurate determination of the T&D property's true cash value.

B. Petitioners Have Not Proven That The STC's Nonuse Of A Sales Comparison Approach Constitutes Error Of Law Or Adoption Of Wrong Principle

Petitioners failed to prove that the STC's judgment on this issue was legally erroneous. Petitioners never showed how a sales comparison approach could be used in this context. Petitioners' testimony at trial confirmed that any attempt at doing a sales comparison approach would have resulted in an indefensible, subjective guess as to the value of *just* the T&D property transferred in the allegedly comparable sales. The

Tribunal finds that taking this subjective, indefensible value and then further adjusting it to conclude to an indication of Michigan T&D property would be problematic at best.

Described below are just some of the issues Petitioners themselves could not resolve or which they admitted were unresolvable. We will take as an illustration Ex. P-356, containing Petitioners' most detailed data concerning sales, because even the most detail provided cannot resolve the necessary questions. This detail was created as part of "qualifying" the sale. Most of the sales data given to the STC was never qualified. Sansoucy Tr. Vol. 10-A, pp. 8-9. Because Ex. P-356 was never provided to the STC, nor to the parties as of the date required for exchange of expert reports, the Tribunal admitted Ex. P-356 for illustrative purposes only. Tr. Vol. 10-A, p. 46.

1. Date of sale

At the very start, there is uncertainty as to even one of the simplest questions: what date is used to establish a purchase price? The merger or acquisition announcement date or the closing date? No one has answered that question. Some of Petitioners' "sales" were merely an offer with various contingencies – they may have never closed. Tr. Vol. 24-B, p. 31. One of Petitioners' examples of a transaction (admitted into evidence solely for illustrative purposes) was the MCN Energy Group, Inc./DTE Energy, Inc. merger. That merger was announced on October 4, 1999 but had not closed during the hearing in this matter (Ex. P-356, Bates p. 18620), during which one-plus year period the companies involved were buying and selling property (and the purchase price changed), so that there are questions as to what tangible and intangible assets were sold, at what price, and when. Tr. Vol. 29-B, pp. 92-106.

2. Determining the purchase price for all assets sold

Another significant issue is finding the cash equivalent of what the buyer gave up,²³ because major utility sales are rarely for cash. Vol. 25-B, pp. 86, 98. Rather, stock is frequently exchanged and such stock must be valued. See Ex. P-348, Table 1, Column I (the ten most recent transactions and all the large transactions were for stock). The volatility of stock prices makes the date of valuation critical. Converting stock to a cash equivalency as of *any* date is difficult. If all the shares exchanged in a merger were dumped into the market as of the appraisal date, the prices would certainly drop. Tr. Vol. 27-B, pp. 17-18. Petitioners ignored that phenomenon in their “illustrations,” thereby overstating the true cash price paid for the acquired company.

3. Determining net book cost for all assets sold

Petitioners, although rejecting net book cost as a value indicator in a cost approach for regulated public utility property, use it as the benchmark for most comparisons in their sales data analysis by creating sales price to book values. See Ex. P-356. They have never explained, and cannot explain, how it is *not* relevant as a cost indicator for regulated public utility property but *is* relevant for a sales comparison indicator involving a combination of intangible assets and tangible regulated and unregulated property. Nevertheless, Petitioners admit that balance sheets are created as of ends of accounting periods, not dates of mergers or merger announcements. Tr. Vol. 24-B, p. 38; 25-B, pp. 28-29. The ratios Petitioners rely on are necessarily mismatches.

4. Determining what the buyers paid for which assets

²³ Debt assumed must also be converted to present value, which Sansoucy admits is yet another judgment call. Tr. Vol. 24-B, pp. 37-38.

As set forth above, no sale presented involved just the type of T&D property subject to the contested STC multiplier Tables. All sales, therefore, require an allocation of a purchase price to just T&D property. Petitioners' method set forth in P-356 for illustrative purposes is simple – *assume* current assets sold at book value (Tr. Vol. 29-B, p. 89), *assume* intangible and other assets not on the balance sheet had no value (*id.*, p. 108), and *allocate* the remaining purchase price to only non-current tangible book assets on the balance sheet at a *uniform* ratio. *Id.*, pp. 91-92; Ex. P-356, Bates p. 018622; Sansoucy Tr. Vol. 10-A, pp. 21-22. The allocation process is admittedly a matter of “judgment,” *id.* 20-21, in truth, guesswork. There are numerous unresolved problems with this allocation approach.

(a) Intangibles

Intangible assets are not taxable in Michigan under Const 1963, art 9, § 3. *Michigan Bell Telephone Co v Department of Treas*, 445 Mich 470; 518 NW2d 808, *cert denied*, 513 US 1016; 115 SCt 577; 130 L Ed 2d 492 (1994) (only tangible property is taxable under the general property tax act and Const 1963, art 9, § 3, the laws that apply to the assessment of T&D property).²⁴ Evanko conceded that there are many intangible assets owned by utility companies including contracts for the sale of goods, customer lists and a work force in place, the value of which cannot legally be attributed to T&D property. Tr. Vol. 8-A, pp. 61-62, 67-68.

To the extent any intangible assets were admitted to exist, such as favorable contracts, franchises, management skills, trade names, assembled work force, patents,

²⁴ The STC was allowed to use stock market data in *Michigan Bell* only because the intangible property of telephone companies is subject to assessment under Michigan Constitution 1963, art 9, § 5).

customer relationships, business value, or going concern value (see Tr. Vol. 24-A, p. 71; 24-B, pp. 29, 44-46; 25-A, pp. 12-15; 25-B, pp. 105-109; 28-B, p. 87; 29-B, pp. 18-19), Sansoucy assigned their value to the tangible property, but such value should have been excluded (Ex. P-356; Tr. Vol. 29-B, pp. 106-108). For example, Sansoucy admitted that a franchise is an intangible asset that may represent a value equal to between 5%-10% of book cost, and it must be excluded from valuation of taxable tangible property in Michigan. Tr. Vol. 25-A, pp. 12-15.

Vandermark also admitted intangibles exist in going concerns and must be excluded from valuation under the general property tax act. Tr. Vol. 18, pp. 87-91; 30-B, pp. 80-82. Evanko similarly acknowledged that the value of intangible assets including contracts, customer lists and a work force in place may not be lawfully ascribed to T&D property. Tr. Vol. 8-A, pp. 68-69. Yet, no one demonstrated or explained how to make any supportable exclusions for the value of such intangible assets.

(b) Non-utility assets have value that may have no relation to net book value

Besides suffering the fatal defect of failing to exclude the value of intangible assets from their proposed sales approach, Petitioners provide no support for their assumption that all personal property has the same value in proportion to its net book cost. Certainly, tangible property – particularly that of a combination of regulated and non-regulated businesses – has varying market values in relation to its net book cost. It does not have uniform ratios, as Petitioners baselessly and erroneously contend.²⁵ Tr.

²⁵ Again, the Tribunal concludes net book cost is a valid indicator for cost-of-service regulated property – not non-regulated property or property whose primary market is in non-regulated uses. Virtually all the allegedly comparable sales raised at hearing included property that was not cost-of-service regulated.

Vol. 24-B, p. 62; 25-B, pp. 4-17; 26-A, pp. 8-29; 29-B, pp. 70-92. Most companies own land, for example, and some companies own land all over the world. Yet, land is not part of the T&D property valued by Tables H and I, and moreover, it would need to be valued at market value, which could be far different from its book cost. Tr. Vol. 25-B, pp. 51-53; 29-B, pp. 105-106.

Additionally, inventory accounted for by the LIFO (last in, first out) method on a company's books can substantially understate market value. For example, Sansoucy ultimately admitted that for one company, the replacement cost of gas was \$533 million more than its net book cost. Tr. Vol. 29-B, pp. 75-87. Yet, in his analysis he assigned a value to stored gas at book and thereby allocated value that was actually attributable to the gas inventory to other assets, including T&D assets.

Parent (holding) companies of public utility companies own investments in deregulated and non-regulated joint ventures, often all over the world.²⁶ Valuing these investments is itself a daunting task. Tr. Vol. 25-A, pp. 56, 61-63. Some such businesses are unregulated service businesses that have little tangible property: unregulated gas and electric marketing operations can be run with trade names, customer relations, skilled employees, desks, and computers. Tr. Vol. 25-A, pp. 74-78. The value of such unregulated businesses is not based on ratios to net book cost of chairs and computers, as Petitioners' Ex. P-356 illustrations incorrectly assume.

Moreover, property that may be cost-of-service regulated, such as generating plants, may be in the process of becoming deregulated and net book cost may not be a valid indicator of the value of such property.

²⁶ Such assets include generation plants all over the world (Tr. Vol. 25-A, p. 57), oil and gas drilling and exploration assets (*id.*, pp. 55-56), real estate developments (*id.*, pp. 64-65) and a fertilizer plant in the middle east (*id.*).

Other mergers included subsidiaries involved in business consulting, telecommunications, shipping, coal mining, and rail lines. See Tr. Vol. 27-B, pp. 7-8; Ex. P-348, Table 1. There is no record evidence establishing the value of these sale factors and showing how those transactions should be adjusted to indicate a fair market value for just the T&D property involved here.

It is highly likely that each of the electric utilities referenced in Sansoucy's Report (Ex. P-348, Appendix A) had power generating plants. Sansoucy admitted, for example, that the Scottish Power PacifiCorp transaction involved purchase of enough power plants to generate almost half of the electricity used in Michigan (Tr. Vol. 27-B, p. 32; P-348, Table 1), and that "...each major utility in New England hosted one nuclear plant...or two." Tr. Vol. 10-A, p. 28. Under several state electric industry restructuring plans, *generation* is to be severed from the integrated utility in some cases and completely deregulated, or is required to be operated separately with the electric output from the generating plants sold at competitive prices. See, e.g., Ex. R-348, pp. 7, 12. Sansoucy admitted the sales prices in his Appendix A are "attributable . . . to purchasers anticipating the effects of deregulation in the near or intermediate term." *Id.*, p. 12. In such states, net book cost for power plants does not necessarily reflect their value. Rather, their value is determined by the market prices of electricity. Sansoucy again assumes, without support, that the *parties* to the transactions valued the plants in proportion to their net book cost. See Tr. Vol. 29-B, p. 91. Yet, Petitioners have never otherwise contended net book cost is relevant to deregulated or non-regulated property, let alone regulated property.

The foregoing amply demonstrates the unreliability of Petitioners' evidence on this issue. That they have not sustained their burden of proof is further highlighted by the fact that when Sansoucy has valued single generating plants, *he used only cost and income approaches* because he could not make – with any level of reliability – the adjustments necessary to take sales prices of single plants and compare them to his subject plant. Tr. Vol. 25-A, pp. 18-25. Yet, Petitioners apparently claim the STC should have analyzed mergers and acquisitions of entire integrated utilities, valued and excluded *all* of the power plants and other non-T&D property, and somehow reliably found the price paid for just the T&D property, and then made adjustments to that putative “price” to value the subject property.²⁷

Thus, to use a sales comparison approach, *all* the assets – tangible and intangible – would need to be valued. This is so because the sales price reflects the value of *all* assets included in the sale. Without knowing the value of all the assets, the value of or price paid for just T&D assets that are subject to the STC Tables cannot be determined.²⁸

5. Motivations of buyers and sellers

The motivations of the buyers and sellers must be examined as well. Such motivations are not often revealed. But in one of Petitioners' illustrations they were:

The sale will combine DTE's position as a leading regional coal marketer and MCN's participation in pipelines and gas reserves in the regional gas corridor and will allow the combined company to offer attractive energy

²⁷ It is worth recalling that Staff never had to value FERMI to determine how much historical income it contributed to Detroit Edison. But if all the stock of DTE Energy were to sell, then to use that sale as a sales comparable Staff would have to value FERMI and all other assets to figure out what was paid for just T&D property. Staff would have to find the value of all the power plants in these Sansoucy mergers as well.

²⁸ In contrast, the STC's cost and income approaches value only the T&D assets subject to the tables. The STC did not have to, nor did it, value Detroit Edison's, Consumer's or MichCon's land, work force, management, power plants, computers, intangible property, or other property not at issue.

supply options to large customers *and develop as a major regional multifuel and power marketer*. They also believe that DTE's existing interconnections to the Canadian and midwest electricity systems create an ability to sell electricity to eastern locations through Ontario and to midwestern locations, which have relatively low capacity, through Michigan's southern interconnections. These existing electricity interconnections make the combined company well-positioned *to build a regional marketing business that complements DTE's and MCN's existing coal, electricity and gas marketing businesses*. DTE and MCN believe this will generate significant opportunities to deliver greater value to shareholders.

Ex. P-356 Bates p. 18620 (emphasis added).

There is no evidence how the parties to the merger valued Michigan Consolidated's (MCN) or Detroit Edison's (DTE) T&D property. Further, operating cost reduction opportunities and unique synergies and marketing opportunities drove the sale – *i.e.*, constituted a substantial part of the sale price. Yet, despite these clear indications that value was assigned to intangible factors, Petitioners assumed the value of the unregulated marketing businesses to the purchaser was only 1.52 times (later reduced to 1.45 times after cross – Tr. Vol. 29-B, pp. 92-93) the book value of tangible property such as its tables, chairs, and computers – and assumed *no* value attributed to such factors as work force, customer relations, and contracts because they have no book cost on the balance sheet. Ex. P-356, Bates p. 18622; Vol. 29-B, p. 108. Again, how Newberg or the STC should have: (1) valued the *prospective* combined DTE and MCN marketing businesses anticipated by the merged company (or any other businesses owned by any merging companies for that matter), (2) combined that value with the values of all other DTE and MCN businesses, then (3) subtracted such values from a purchase price (after solving all of the other issues raised in subsections 1-4 above) to find the value of just the T&D property is unexplained by Petitioners.

6. Sansoucy's segment sales cannot be used to indicate value of T&D property as of 12/31/97

Sansoucy's original report to the STC, prior to the STC's adoption of Tables H and I, lists what he describes as "sales of portions of electric systems." Ex. R-23, Table 1, p.25. Again, Sansoucy's proffered information cannot resolve the problems identified above. None of the sales was qualified, the term Sansoucy used for determining if a sale: 1) is arms length, 2) is without undue duress, 3) is not forced by regulators, 4) has verifiable pricing conditions, 5) has non-taxable or intangible property removed. Tr. Vol. 10-A, pp. 7-10; 27-A, p. 7 (sales only "verified, not qualified"). The extra detail of Ex. P-356 was wholly lacking. There are many other unresolvable problems as well.

First, Sansoucy testified that he calls state regulatory agencies yearly for sales information. Tr. Vol. 27-A, pp. 5. But the latest segment sale is alleged to occur in July 1993. Most are from the mid-80s. Ex. R-23, Table 1, pp. 25-27. Why is all this data so stale and useless? Why did Sansoucy present outdated data instead of the contemporary data he said he has?

In 1996 the Federal Energy Regulatory Commission (FERC) issued its Order 888, significantly changing the market for transmission services.²⁹ That Order required utilities to open up their transmission lines to allow third parties to transmit electricity across the utility's transmission lines. Tr. Vol. 27-A, pp. 17-18, 28. The utility could charge the third parties no more than the rate charged to transmit its own electricity. Thus, prior to Order 888 in 1996, if third parties wanted access to utility transmission lines, they either had to build their own transmission lines or negotiate their own

²⁹ Federal Register, Vol. 61, No. 92, May 10, 1996, pp. 21542, 21550, 21562.

purchase of the lines. Tr. Vol. 27-A, pp. 17-18, 28. After FERC Order 888 was issued in 1996, third parties could now simply use the utilities' lines; they did not have to buy them. After 1996, therefore, a utility's bargaining power with prospective users of the system (and hence their value) was substantially reduced. The data Sansoucy presented was all pre-1996.

Second, to an even greater extent than the merger and acquisitions, these segment sales were to adjacent purchasers (*id.* pp. 27-8, 42-53; Ex. R-23), and Vandermark admitted that sales to adjacent purchasers are not indicative of the "usual selling price," as required by MCL 211.27 (Tr. Vol. 20-B, p. 12).

7. Adjusting sales prices of T&D property to indicate Michigan T&D property

Petitioners never concluded to a price paid for just the T&D property included in their allegedly comparable sales. Consequently, they could not, and did not try to, take the next step: use a T&D sale value and adjust it to arrive at an indicator of Michigan utility property.

Petitioners' failure to adduce proof of this issue is taken as an admission it cannot be done. Petitioners effectively admitted as much at the hearing. Vandermark conceded one would have to know the characteristics of the property sold, but he did not know how to adjust for differences in utility property from state to state. Tr. Vol. 17-A, pp. 51-58, 61-63. Vandermark conceded different state regulatory agencies have different laws, procedures and budgets for regulating T&D property. *Id.*, p. 50. Sansoucy admitted the ways states regulate their utilities vary, but he could identify no objective way to adjust for regulatory differences among the states. Tr. Vol. 24-A, p. 24, 62-76; 26-B, p. 82. He

had the same problem with franchise differences (Tr. Vol. 26-B, pp. 80-82), physical differences, and locational differences (Tr. Vol. 26-B, pp. 13, 95). Sansoucy admitted no book anywhere gives guidance to assessors in making such adjustments (Tr. Vol. 26-B, p. 66), and he finally conceded that the required adjustments are simply subjective (Tr. Vol. 26-B, pp. 19, 27, 29, 32, 64, 65).

As Newberg correctly observed, “if you can’t make the final step, making adjustments in the direct sales comparison approach, the [sales] data doesn’t help you.” Tr. Vol. 44-A, pp. 63-64.

C. Michigan Law Does Not Require Use Of Alleged Comparable Sales

No Michigan statute or court decision mandates the use of the sales comparison approach to value; it is only one of the three traditional approaches to value that may be used where applicable. There are numerous situations (such as in this case) in which the market data available for proper application of a sales comparison approach is simply inadequate. For example, when there are insufficient sales of truly comparable property, the sales comparison approach cannot be used. The Tribunal held in *Thorn Apple Valley Inc v Detroit*, 9 MTT 416 (1996), for example:

The sales comparison approach can be of limited use if there are few true comparable properties sold on the market. Without reliable and complete information on the economic factors of the sales influencing buyers’ decisions, it is difficult to arrive at a reliable indication of value for the comparable in order to adjust accurately to the subject.

Id. at 421; see also *Mohawk Data Sciences Corp v Detroit*, 63 Mich App 102, 107-08; 234 NW2d 420 (1975) (where dearth of sales failed to support pricing data, use of that data results in unlawful valuation). Similarly, when adjustments that must be made to alleged comparables are too great, the sales comparison approach, although considered, should not

be used. See, e.g., *Detroit Gun Club v Commerce Township*, 7 MTT 576, 582 (1993); *Fairview Enterprises Inc v Comins Township*, 7 MTT 238, 247-249 (1991).

The judgment of the Staff and STC is correct: based on investigation, on seminars attended, and on their experience, they knew they could not find sufficient information. Further, even if they had such information, they would not be able to reliably adjust it to arrive at a value indicator for T&D property entitled to any weight in comparison to the income and cost indicators derived from their direct study of 80%-95% of the property subject to Tables H and I. Newberg, Tr. Vol. 44-A, pp. 23-24. No STC table of personal property multipliers is based on three appraisal methods, yet the Tribunal and Court of Appeals have held those tables are valid for mass appraisals. Hilpert, Tr. Vol. 45-A, p. 62.

Petitioners assert that the STC and Staff ignored or gave cursory attention to comparable sales information (Tr. 45-B, pp. 66-67). STC and Staff were not alone in their considered judgment that no comparable sales were available; they had the support and benefit of the BDO Seidman's research, which also concluded no comparable sales were available for use (Ex. P-3, Bates pp. 009967). In performing its multiplier study for the STC, BDO Seidman used sales data where valid and reliable value inferences could be drawn, as evidenced by their liberal use of comparable sales for constructing tables other than H & I under study (Ex. P-3). The important distinction is that of comparability, which permits valid and reliable value inferences to be drawn. If a sales transaction is insufficiently comparable to the property being appraised, and cannot be made to be so through the process of adjustment as it is presently understood in the body of appraisal

knowledge, then continuing to call such a transaction a sale, implying that it has utility as a comparable sale, does not advance the solution of the appraisal problem.

The Tribunal finds and concludes that the Staff and STC gave appropriate consideration to the sales comparison approach and correctly found that the sales data advanced by Petitioners could not be adjusted and used to yield a reliable value indicator for T&D property entitled to any weight in comparison to the income and cost approach indicators derived from the Staff appraisal of 80%-95% of the property subject to Tables H and I. The Staff's and STC's nonuse of the sales comparison approach to value T&D property is fully explained and supported by the record in this case and does not constitute an error of law or adoption of a wrong principle.

V

Methodology

A. The STC Applied An Appropriate Methodology To Construct Tables H and I

1. Lack of “standards” or “protocol”

Petitioners claim that Tables H and I were developed without “standards” and without a “protocol” or “specific procedure for developing multiplier tables.” Petitioners’ Brief, pp. 21-23. The applicable legal standard is that the Tables as a mass appraisal tool yield reasonable estimates of the true cash value of T&D property when applied to the original cost by year of acquisition of such property. That is the standard used by the STC to develop Tables H and I. Petitioners have not identified a “protocol” to develop such tables other than the method used by Respondent. Nor have Petitioners introduced

evidence that the method used by Respondent constitutes an error of law or the adoption of wrong principles. Instead, other than the ultimate value conclusions yielded by the Table H and I original cost multipliers, Petitioners' witnesses agree that the STC's multipliers reflect the requests of the Assessor Group.

2. Mass appraisal method

Petitioners also claim that Tables H and I are inappropriate "to be used when estimating the true cash value of public utility transmission and distribution property in individual assessment units in Michigan." They argue that "Tables H and I are not intended to accurately and reasonably relate to the fair market value of individual properties in an assessment unit" and thus are a flawed appraisal method. Petitioners' Brief, pp. 16-17. For the reasons set forth in parts II, III, and IV above, this claim is wholly unsupported in fact or law.

Tables of original cost multipliers are a recognized and accepted mass appraisal tool used to estimate the true cash (market) value of tangible personal property. That a specific property appraisal may conclude to a value estimate different from that generated from application of Tables H and I does not in itself prove that the Tables are invalid or a flawed appraisal method. Tables H and I are based upon a careful study and appraisal of 80-85% of the electric transmission and distribution property and 90-95% of the gas distribution property in the state of Michigan, nearly the universe of properties in both instances, and are designed and constructed as a mass appraisal tool to yield reasonable estimates of the true cash value of utility property in individual taxing jurisdictions.

3. Market calibration/testing

Petitioners also assert that “Tables H and I were never tested to see if they can be shown to be an indicator of the true cash value of T&D property in assessing units.” Petitioners’ Brief, pp. 23-26. Again, as noted above, a mass appraisal guideline cannot be proved correct or incorrect by whether it finds the value of any particular piece of property. Ultimately, Petitioners’ market calibration argument seeks to validate the Tables by comparing values from the Tables with a value of a sample of the property. But under this new version of Petitioners’ rejected “sample” argument, Petitioners claim all or virtually all of the property subject to a Table should have been used for the sample. Either form of Petitioners’ sample argument fails.

Petitioners make the same mistake they make with their alleged procedural standards. It is incumbent upon them to prove an adoption of wrong principles or an error of law; they cannot invent a standard that heretofore has not existed for the development of multiplier tables and claim the STC violated it. The Legislature entrusted table development to the STC both in its mandate to create an Assessor’s Manual and again when it specifically appropriated funds for the study of personal property multiplier tables. MCL 211.150 (the STC must supervise assessors); MCL 211.10e (assessors are to use STC Assessor’s Manual). If any developmental standard (other than finding an estimate of true cash value) was needed, it should have come from the Legislature; certainly it was not for Petitioners to invent it. Market calibration is another largely undefined invention of Petitioners.

The very model of “market calibration” Petitioners propose (BDO scatter diagrams, Ex. P-376, p. 126594 [M&E]; p. 126596 [furniture and fixtures]), does not prove the STC is in error. Few, and for some tables, not any, market sales fall on BDO’s

measure of central tendency that was then used to construct the table. In other words, the BDO tables Petitioners contend are models for market calibration often do not produce the selling price of the property that was used to construct the table. *Id.* But this is quite proper: the table is merely a measure of central tendency (least squares curvilinear criterion of fit), *i.e.*, it is a “mass appraisal” tool used to “estimate” true cash value. See Tr. Vol. 7-B, pp. 93-95.

Consequently, Petitioners propose (and must prove applicable) a “market calibration” test for utility property more demanding than that used for any other personal property table in the state of Michigan. (See P-376. BDO sampling document, *id.*) They claim the STC should have appraised all (or some unspecified fraction) of the property subject to the Tables individually and then compared the appraised values to the values generated by the Tables, based upon the appraised company’s original cost of property subject to the Tables. Apparently, Petitioners contend that the two values must fall within some unspecified percentage of each other, because they claim: “Such a test [individual appraisals of each company’s property], had it been made, would reveal an unacceptable disparity between the proposed value and reconciled value.” Petitioners’ Brief, at 24.³⁰

First, “such a test” is not appropriate. It would be impractical and defeat the very purpose of a mass appraisal tool if to “test” the tool, individual appraisals of all (or some

³⁰ Petitioners also raise their “ratio” argument (*i.e.*, the companies have different ratios of property subject to the Tables to all other property) to show the Tables produce an unacceptable disparity between true cash and reconciled value. It is sufficient to note that the value of the T&D property should not (and is not under the Tables) affected by how much other property not subject to the Tables the companies own. For example, if one of the electric utilities sells a generating plant, its ratio of T&D property to other property will rise, but Petitioners do not (and cannot) argue that such a ratio increase would cause T&D property value to increase.

large unspecified fraction) of the property must be performed. Hilpert Tr. Vol. 46-A, pp. 68, 72. This is just a summation of individual appraisals. However, even assuming such a “calibration” test is appropriate, it was incumbent upon Petitioners, as part of their burden, to prove such a test produces “unacceptable disparity,” not speculate as to its possible existence. Original cost data was readily available to Petitioners from each utility. Petitioners could have plugged the cost data into the Tables to determine if any alleged “disparity” exists. Petitioners, however, chose not to do so. Petitioners try to blame the utilities for this failure of their proofs arguing: “The trier of fact may properly infer that evidence would have been adverse to the party controlling it, if that party fails to produce it at trial.” But the adverse moving party is the STC. It does not have original cost data by company and is moving for judgment after the close of Petitioners’ and Respondent’s proofs. Tr. Vol. 49-A, pp. 61-73. It was Petitioners’ obligation to prove their case. Most important, Petitioners did not seek original cost data from the Utilities through discovery, as they claim. Brief, p. 25. Petitioners simply never asked for original cost information as of 12/31/97 from any of the Utilities for any reason at all, let alone to do a “market calibration” of the Tables.

In contrast, the evidence in the record raises no inference of disparate impact among taxpayers. Messers. Hilpert and Newberg both testified that the Tables resulted in good approximations of the true cash value of all utility property. See e.g., Tr. Vol. 37-A, pp. 42-43; 45-A, pp. 70-72, and 46-B, p. 82. The Tables are based upon a relationship between original cost and value for over 85 percent of the property subject to the Table. Tr. Vol. 46-A, pp. 66-67. Newer property is valued higher, with property value decreasing as the property ages. Companies with primarily new property would have

their property valued higher under the Tables than companies with primarily older property. See Exs. P-8 and P-9A. Nor did the STC find any erratic patterns of investment from year to year. Hilpert Tr. Vol. 46-A, p. 70.

Hilpert further testified that the STC received no complaints from the Utilities claiming an adverse impact on them. Tr. Vol. 48-B, pp. 33-34. All of the participating Utilities themselves submitted studies supporting one table based on their combined original cost data. AUS Consultants Report and cover letter to client Utilities, Exhibits P-1 and P-2. It would be for the Utilities to complain of a disparate impact if the Tables overvalue some property of some companies and undervalue that of other companies. Not only have there been no such complaints, but the Utilities themselves proposed one table per industry for all companies. *Id.*

B. Petitioners Did Not Prove That The Staff And STC Treatment Of FERMI Constituted An Error Of Law Or Adoption Of Wrong Principles

Petitioners' attack on the value conclusion of the Staff and STC income approach centered on the treatment of one asset, the FERMI electric generating plant owned by one company, Detroit Edison Co. Petitioners make two arguments that are essentially mixed together – one, that FERMI does not earn in proportion to its net book cost and, another, that accounting treatment for FERMI in 1998 somehow affected the value of T&D property by referring to a document not in evidence, Detroit Edison's 1998 Annual Report to the MPSC, Proposed Ex. 277. Both arguments are without merit.

1. Eric R. Newberg showed how Petitioners' FERMI arguments have an immaterial effect on his conclusion

Newberg's analysis starts from the unremarkable premise that FERMI, a \$2.7 billion net book cost nuclear power plant, earns income for Detroit Edison. Sansoucy agrees that FERMI does earn income:

It is still going to get money. Let there be no misunderstanding.
It's going to get money.

Tr. Vol. 11-A, p. 69. Sansoucy merely claims that FERMI does not earn as much income as other property (and it was the only specifically identified asset for which Sansoucy made this claim):

FERMI is not earning *at the same assumed rate of earnings* that this analysis [*i.e.* Ex. P-9A, Ex. R-34] assumes . . .

Tr. Vol. 10-B, p. 49.³¹ (Emphasis added.)

While FERMI earns in proportion to its net book cost, the proportion of net book cost is slightly different for FERMI than for all other assets, because a small portion of its net book cost does not earn and another portion earns at 8%. The reasons and rationale were spelled out in Detroit Edison's Annual Report, P-276, n. 10, p. 123.10, Bates p. 001546. Newberg recalculated his Detroit Edison income approach and determined that adding more precision as to FERMI had *de minimus* effect on his value conclusion – less than .87%. See Ex. R-34 and supporting testimony in Tr. Vol. 43-B, pp. 60-73, and 44-A.

³¹ On page 32 of their Brief, Petitioners make the claim “it is possible that FERMI II has never, in fact, contributed to the net operating income of Detroit Edison Company.” They provide no citation for this claim, and it is absolutely contrary to the testimony of the only witness whom Petitioners claimed was capable of reading regulatory reports with any level of expertise – Mr. George Sansoucy – who said “It’s *still* going to get money. Let there be no misunderstanding. It’s going to get money.” Tr. Vol. 11-A, p. 69 (emphasis added).

Petitioners put into evidence over a foot of Detroit Edison's audited annual reports to the MPSC, all of them showing billions of dollars on the books for FERMI. Petitioners' claim that a several-billion-dollar asset of a regulated entity contributes nothing to rates of income without the subject even being mentioned somewhere in detailed yearly regulatory financial reports reflects their flawed understanding of the regulatory rate-making process.

Nevertheless, Petitioners argue in their Brief, pp. 51-52, T&D property value should increase by about \$1 billion if FERMI'S influence were removed. Petitioners' claimed \$1 billion increase in T&D property is supported only by Visual Aid 19 created by Petitioners' counsel and used in the cross-examination of Newberg. Tr. Vol. 43-B, pp. 4-16. Newberg denied the calculations were meaningful, and Petitioners called nobody to contradict him.³² See Tr. Vol. 43-A, pp. 43-44, 49-50, 52-53, 61-62; 43-B, pp. 9-10; Petitioners' Brief, pp. 51-52; Visual Aid 19. The Tribunal need not consider the actual reasons why Visual Aid 19 is wrong, because no witness has claimed it is right.

2. Petitioners' argument concerning the MPSC's classification of FERMI as a regulatory asset in 1998 is misplaced

Not only do Petitioners rely upon an argument based on a Visual Aid unsupported by expert testimony and refuted by Newberg, they misinterpret the Michigan Public Service Commission's accounting treatment of FERMI in 1998.³³ They argue in their

³² Sansoucy never refuted Eric Newberg's more precise recalculations of the effect of FERMI nor testified in favor of Petitioners' Visual Aid 19. (Brief at 51.) Sansoucy testified in February that Staff should have removed FERMI influence from 1998 projected income, but he didn't say how it should be done or what the total effect would be. See Vol. 23-B, pp. 4-25; 28-B, pp. 70-71.

But Newberg provided the Tribunal with his more detailed analysis three months later in May. Tr. Vol. 43. Sansoucy never testified in rebuttal as to what Newberg actually testified to. Sansoucy was crossed on some of the components necessary to recalculate more precisely the effect of FERMI, but not all of those addressed by Newberg. For example, Sansoucy claimed in direct testimony that FERMI'S phase-in of rates created complexity in addressing the effect of FERMI. Tr. Vol. 23-A, p. 67. Sansoucy never discussed the effect of the FERMI deferred rate phase-in, but Newberg did. See Ex. R-34, line 26, Tr. Vol. 43-B, pp. 62-63; Ex. P-276, p. 232, lines 9-11 (the income earning "regulatory asset for deferred depreciation and return" of \$84,089,000). Newberg also correctly ignored the regulatory assets that do not earn income. *Id*; Ex. P-276, p. 232, lines 1-3, 17-18, Bates p. 1604. Newberg also appropriately recognized decommissioning expense is not depreciation and does not reduce the income earning capability of the property as does depreciation. Tr. Vol. 43-A, pp. 65-70; Ex. P-276, p. 219, fn. 1, Bates page 1582; Ex. R-34, lines 2 and 34. See also Newberg cross, Tr. Vol. 42-B, p. 67. Newberg also correctly reduced net book cost of FERMI as of 12/31/97 by \$30 million because as of that date, \$30 million of net book cost was not allowed to earn income. Ex. R-34, line 27 ("1/10 of 300 million amortization").

³³ To make this argument, Petitioners referred to documents not allowed into evidence and ignored the Tribunal's continual admonitions that mere disparate pieces of 1998 data are in themselves meaningless without the context of all other 1998 data, such as asset additions, asset retirements, depreciation, and

Brief that because 1998 and 1999 income did not go down when FERMI was “removed,” FERMI or its net book cost has no effect on income. This proves nothing. Income did not change materially in 1998 or 1999 because nothing material changed as to FERMI, or T&D property, in terms of income generated by the assets.

Sansoucy himself rebutted Petitioners’ argument admitting that FERMI will continue to earn income after the accounting change:

The company has removed by adjustment, not by retirement but adjustment, the entire nuclear plant account for FERMI from the gross book *plant account ... moving it out of gross book and putting it into what would be commonly called a regulatory asset*. It is still going to get money.

Let there be no misunderstanding it is going to get money.

Tr. Vol. 11-A, pp. 68-69 (emphasis added). The reason for the post-1997 reclassification of FERMI net book cost as a regulatory asset is explained by Sansoucy as follows:

A Basically going to speed up the recovery of FERMI as a regulatory asset, get the money paid back.

Q Through?

A *Through rates*.

Q What does the last sentence mean?

A (Witness reviewing document [Proposed Ex. 278, the Detroit Edison 1997 Annual Report].) The last statement means that there was *no impact on income for the writeoff of FERMI two [sic] assets and the subsequent recording of regulatory asset for the unamortized nuclear costs*.

Q What does that mean?

A To me that means that there had been a recovery mechanism for a portion. There had been an amortization mechanism for a portion.

When FERMI was moved completely into an impaired regulatory asset account, the earnings on the net plant unaffected remain the earnings on the net plant unaffected and FERMI'S earnings are going to be separated. So that there was no effect on these earnings or no effect on net income of the company related to its primary plant.

Tr. Vol. 11-A, pp. 76-77 (emphasis added). The Tribunal agrees with Sansoucy's conclusion that earnings of all the assets including FERMI are "unaffected."

Newberg verified with the MPSC that the 1998 reclassification of FERMI net book cost from a plant account to a regulatory asset account would not affect his T&D property valuation. As Newberg summarized, in response to the STC counsel's questions:

Q Now, considering Petitioner's concerns regarding the FERMI plant, you sat through some testimony where FERMI has been discussed?

A Yes.

Q Did you investigate the matter as to the effect of FERMI becoming a regulated asset in 1998?

A Yes.

Q And what did you discover?

A I discovered that even though it was a, became a regulatory asset in 1998 that it would have no effect upon our study if it had been done in 1998, and has no effect on the 1997 study.

Q And how did you find out this information?

A Through conversation with the Public Service Commission.

Tr. Vol. 37-B, pp. 19-20.

Q (BY MR. BISHOP): In regards to FERMI, you indicated that you had talked to the MPSC staff in regard to that matter. What did they tell you?

* * *

A Regarding the FERMI issue I talked to Bill Kusiak and Sue Devon at the Public Service Commission.

Q (BY MR. BISHOP): What did they relay to you?

A Essentially that, the fact that FERMI became a regulatory asset would really have no impact on T&D property. It would not influence that. In other words, there's a relationship between the net book value of the property, whether or not it's a regulatory asset, the net book value of any income.

Tr. Vol. 37-B, pp. 22-23.

Thus, Petitioners' claim that 1998 and 1999 income is not materially changed is explained by their own experts' testimony, as confirmed by Newberg based upon his inquiries to the MPSC. The MPSC's treatment of FERMI in 1998, specifically that the MPSC classified it as a "Regulatory Asset," produced no material change in FERMI'S contribution to Detroit Edison's income. To be specific, there is no evidence that if Newberg recreated VA-20/R-34's analysis with 1998 data, recognizing that FERMI was an income producing regulatory asset (just as he treated the FERMI rate phase in regulatory asset; see VA-20/R-34, lines 4, 6, and 26), he would have found any

significant difference between T&D property value with FERMI in or out of his analysis.³⁴

In summary, Petitioners have done nothing to refute Newberg's presentation of the immaterial effect on the ultimate value conclusion for T&D property caused by the fact that FERMI is not allowed to earn in the exact same direct proportion to its net book cost as are all other assets. As this was the only specific exception to the rule that all property earns in the same proportion to its net book cost that Petitioners even attempted to identify, their arguments attacking net book value as a value indicator fail.

³⁴ As at trial, Petitioners' FERMI arguments in their Brief ignore what their expert says and confuse rate base with net book cost, and the specific plant accounts, and the regulatory asset accounts within which net book cost is recorded. Sansoucy also frequently misuses regulatory terms of art and Michigan regulatory concepts. The extent to which Petitioners' explanations or terminology are confused is an indication that they failed to meet their burden of proof.

Nevertheless, despite the loose terminology, Petitioners have not proved an effect by FERMI for 1998 based on their own expert's testimony. Petitioners admit FERMI'S net book cost was removed from a *plant* account and moved to a *regulatory* asset account. (Brief at 52.) But the argument in Petitioners' Brief merely talks about the effect of *removal* for "Fermi" and completely ignores where FERMI *ended up*. See Sansoucy Tr. Vol. 28-B, p. 45 ("a regulatory asset was created out of Fermi").

Petitioners' argument also fails to explain or acknowledge what exactly transferred from one account to the other (*i.e.*, if it was not FERMI'S net book cost, what was it?). The accounts keep track of dollars, but Petitioners talk as if the asset itself moved! Again, Petitioners' expert, Sansoucy, contradicts Petitioners' argument. He admits Detroit Edison recorded in the regulatory asset account the "unamortized nuclear costs." Tr. Vol. 11-A, pp. 76-77.

Thus, regardless of terminology, FERMI never disappeared from the company's books and records, because, as both Eric Newberg and George Sansoucy testified, regulatory assets are set forth in the financial statements. For example, in Visual Aid 20, analyzing FERMI regulatory assets as they appear on the company's books as of 1997, Newberg added the net book cost of an income-earning regulatory asset (deferred FERMI rate phase-in) to the net book cost in the plant account. See line 4 of Exhibit R-34. Those regulatory assets that did not earn income (see Ex. P-276, Bates 1604) were not used.

Simply because FERMI net book cost transferred from a plant account to a regulatory asset account in 1998 has no effect on the Staff's study for T&D property. If the study were replicated in 1998, it would have to take into account the net book cost of income-earning assets regardless of within what account they would be classified. Tr. Vol. 37-B, pp. 19-23. Because of the FERMI transfer, income-earning regulatory assets were no longer a mere \$84 million, as they were in 1997, but close to \$2.8 billion as FERMI'S net book cost was transferred, with a corresponding decrease in nuclear power plant account net book cost. Regardless of how FERMI is accounted for, there is no legitimate way or reason to attribute its income to T&D property.

C. The STC And Staff Treatment Of Contribution In Aid Of Construction Did Not Constitute An Error Of Law Or Adoption Of A Wrong Principle

Petitioners claim that contribution in aid of construction (CIAC) is erroneously omitted or insufficiently recognized in the Staff valuation study that is the foundation of the STC's construction of Tables H and I.

The record is clear that CIAC is *not property*. CIAC is a financial contribution to offset total construction costs of a project. Hilpert agreed with Sansoucy that CIAC is an “upfront” payment from a third party to a utility that the utility thereafter spends, together with its own money, to construct T&D property. Tr. Vol. 45-B, pp. 14-16. CIAC is required by the MPSC *not* to benefit the utility, but rather to protect existing utility ratepayers (*i.e.*, other customers) from having their rates increased because new customers may require special, more-expensive-to-install property than that of the typical, existing ratepayers. For example, developers may wish to put in underground electrical service to make a development more attractive. Customers who have large lots might require longer utility lines that would be more costly to build than shorter lines to typical lots. These developers or customers with large lots may make a CIAC payment to reduce the net cost to the utility that would otherwise be passed on to other customers. Sansoucy Tr. Vol. 9-B, pp. 42-44.

As Hilpert explained, in *Michigan* electric and gas utilities only earn income on the portion of the property financed by their own funds, *i.e.*, net book cost. Tr. Vol. 45-B, pp. 14-22. Sansoucy agrees. Tr. Vol. 24-B, pp. 21-25. No purchaser would pay more for Michigan T&D property if it includes property financed in part with CIAC. If there were two utilities with T&D property having identical net book values and expected

income, and all other factors were the same except that only one utility had property financed in part by CIAC, the T&D property of the utilities would have *identical* values. Tr. Vol. 45-B, pp. 14-22. This is because CIAC does not affect net book cost, it does not help the utility or any purchaser of utility property earn more income than that supported by the net book cost of its property. See also Newberg Tr. Vol. 37-B, pp. 17-19 (CIAC immaterial per MPSC staff).

To prove the STC's treatment of CIAC constituted an error of law or adoption of wrong principles, Petitioners needed to show that these costs automatically increase value as a matter of law. Specifically, under the facts at issue here, Petitioners would have to prove that these expenditures made to install utility property, which do not increase the earnings base of the property, nevertheless automatically increase the value of the property above the value established by the STC's Tables. But Petitioners have failed to submit any such evidence.³⁵

The arguments Petitioners raise on CIAC were also disposed of by *Pacific Power & Light Company v Department of Revenue*, 10 Or. Tax 417, 1987 WL 15946 (Oregon Tax Court 1987). That Court determined the market value of property owned by a rate-

³⁵ Petitioners have sometimes ignored (but not challenged) the fact that expenses are recovered in rates without a return. (This is one reason income is directly related to net book cost and expenses are largely irrelevant for utility property value.) If Petitioners really believe expenses are not recovered, they would also need to recognize that a purchaser would view property purchased in part with a CIAC contribution as a *negative* influence on both value relative to identical property purchased without CIAC and a negative influence on the STC's table values. For example, CIAC pays for line or pipe service extensions that are longer than typical extensions. Tr. Vol. 9-B, p. 43. Certainly longer lines require more maintenance expense than shorter lines but earn no additional income. Petitioners would have to address whether a purchaser would discount a purchase price from net book cost because of an expectation of incurring additional maintenance expenses for longer lines than shorter lines. For the subdivision developer who pays the utility an extra amount to bury electrical lines, instead of accepting overhead lines available without the need for CIAC, it is also quite likely the cost to repair or replace buried lines is greater than that for lines on top of poles. Because the purchaser can earn a market return on net book cost, the purchaser would need to pay less than net book cost to be made whole for the excess maintenance.

regulated electric utility should not be inflated by CIAC. The assessing authority attempted to impute some income from CIAC to reported income and to its stock-and-debt approach (an approach not used by the STC). (The assessing authority did not even try to add CIAC to its net book or HCLD cost approach, but it did attempt to add other items that were not allowed to earn a return under Oregon regulatory law and would not become part of the rate base.) The Court rejected all efforts at attributing any value to CIAC.

As to why it should not be added to income, the Court's rationale mirrored Newberg's explanation (see Tr. Vols. 37-B, pp. 17-18; 39-B, pp. 52-53):

If CIAC can never be added to rate base and generates only its operating expenses, any value it has to plaintiff's operations must be already reflected in plaintiff's net operating income. It is inappropriate to impute additional income since the property cannot produce any additional income. A reasonable buyer would not pay more for the property than the actual income justifies.

10 Or. Tax 439.

Furthermore, the defendant assessing authority did not attempt to do what Petitioners want here – attempting to have CIAC somehow added to net book cost. Nevertheless, when the assessing authority attempted to add other items of cost upon which the utility could not earn a return, the Court's rejection of the effort clearly explains why adding CIAC is an error or wrong principle:

In the court's view, the overriding principle or test is market value. If the market would not pay for property because the PUC [the applicable regulatory body] will not allow that property to earn a return, no taxable value can be assessed to the regulated owner. Defendant's position does not comport with reality. A purchaser would not pay the full price for the unit on a *cost* basis when the amounts for [costs at

issue] will never be allowed to earn a return . . . The court can see no reason why a buyer would pay *cost* for assets upon which he cannot earn a return.

(Emphasis in original.) *Pacific Power & Light Company* is in accord with Michigan law, including *First Federal* and *Antisdale, supra*, that cost may not necessarily increase value. See also California State Board of Equalization Assessor's Manual, p. 6 (“[T]here are property items (*i.e.* contributions in aid of construction) that would have no value for a prospective purchaser of the utility”),³⁶ discussed by Mark Hilpert at Tr. Vol. 49-A, pp. 37-38.

D. A Local Assessment Unit Is Not Free To Disregard Tables H and I And Apply A Substitute Table

Tables H and I as adopted by the STC are part of the official *Assessor's Manual* published and distributed by the STC under the authority of section 10e of the general property tax act; MCL 211.10e. Section 10e provides in relevant part:

“All assessing officials, whose duty it is to assess real or personal property on which real or personal property taxes are levied by any taxing unit of the state, shall use only the official assessor's manual or any manual approved by the state tax commission, consistent with the official assessor's manual, with their latest supplements, as prepared or approved by the state tax commission as a guide in preparing assessments.”

By its plain language, section 10e requires a local assessing official to use the official *Assessor's Manual* or a manual approved by the STC with their latest supplements as a guide in preparing assessments. Tables H and I are part of the official *Assessor's Manual*; and thus, must be used as a guide in preparing assessments of T&D

³⁶ There is insufficient detail in the *Pacific Power & Light* and the California Assessor's Manual as to whether CIAC as defined in those states is actually definable or identifiable as to any specific property rather than an offset to an overall construction cost which is not attributed to any specific property on the books of the utility. But, both states do not allow utilities to earn income from CIAC so the rationale for finding it does not affect market value certainly applies at least as forcefully to CIAC in Michigan.

property. A local assessing official has no authority to adopt and apply *as a mass appraisal tool* a multiplier table other than the latest tables included in the official *Assessor's Manual* or other manual approved by the STC. A local assessing official may depart from applying Tables H and I *only* in respect of a specific tax parcel and then *only* if other recognized and applicable valuation methods (for example: a market value appraisal) yield a more accurate indication of true cash (market) value of the specific tax parcel. *Cf. Lionel Trains, Inc v Township of Chesterfield*, 9 MTT 315 (1996); *aff'd* 224 Mich App 350; 568 NW2d 685 (1997); *IBM Credit Corp v City of Detroit*, 7 MTT 850 (1993).

The Tribunal finds the recent unpublished opinion of the Court of Appeals in *County of Wayne, et al v Michigan State Tax Commission*, decided April 2, 2002, (Docket No. 227236), at p. 3, is instructive on this point:

MCL 211.10e states that “[a]ll assessing officials . . . shall use only the official assessor’s manual or any manual approved by the state tax commission . . . as a *guide* in preparing assessments” (emphasis added). If evidence of a different true cash value is apparent, a party may obtain a deviation from the manual. See, *e.g. Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 353, 356; 483 NW2d 416 (1992). Ultimately, the true cash value of the property controls. See generally *Washtenaw County v State Tax Commission*, 422 Mich 346, 364-365; 373 NW2d 697 (1985)....

VI

Petitioners’ Abandoned Claims Relating To Methodology Are Without Merit

At various times during this proceeding, Petitioners asserted claims relating to methodology that were not addressed in their brief in response to the Motion but were

addressed in the STC's brief in support of the Motion. The Tribunal agrees with the STC that it appears that Petitioners have abandoned such claims. Nevertheless, in the interest of a comprehensive treatment of this matter, they are addressed in some detail and found to be without merit as follows:

A. Original Cost And Financial Data After December 31, 1997

The Staff valuation and multiplier study is predicated on original cost and financial data through December 31, 1997 in respect of the T&D property studied. Petitioners argued at trial that it was an error or adoption of a wrong principle to use a cut-off date of December 31, 1997 when data for the calendar year 1998 could have been obtained and used. The argument is based upon a faulty premise of the nature and purpose of multiplier tables as a mass appraisal tool.

Newberg testified that the Staff's assignment was not to develop a valuation of the subject T&D property *as of a particular date*, but to develop multiplier tables that could be used in future years as a mass appraisal tool to value and assess public utility T&D property. He testified that in order to complete this assignment, two separate processes were necessary. First, a valuation had to be undertaken and developed for the T&D property. Second, the original cost by vintage year of the T&D property had to be obtained. When those two processes were complete, the actual construction of the tables, which was the Staff assignment, could be completed. Absent one or the other, the assignment, *i.e.* the construction of the proposed tables, could not be completed. Tr. 37-A, pp. 20-21.

As Newberg also testified, in order for the tables to have validity, the valuation of the property had to be for a year for which the original cost of the subject property by

vintage year was available. It would not serve the purposes of the multiplier tables to develop factors based upon original costs through year end 1997 tax year and use a value conclusion for a subsequent tax year. If such were the case, it would be impossible to determine what the multiplier would be for the first years the property was in service. It would be, as Newberg testified, a “mismatch.” Tr. 37-A, pp. 23-24.

Staff was required by its assignment to develop suggested multiplier tables for four separate types of personal property: electric transmission and distribution, gas distribution, gas transmission and fluid pipelines. Tr. 37-A, p. 15. It was anticipated that all four of these tables would be adopted by the STC within a relatively short period of time of one another. Because the Staff was uncertain whether it could obtain the necessary original cost data properly formatted for use for all four multiplier tables for years subsequent to 1997, they decided to incorporate only that financial data that would match the original cost data through year end 1997 resulting in a determination that data after December 1997 would not be used to establish the valuation portion of the assignment. Tr. 37-A, p. 24. This decision does not constitute either an error of law or the adoption of a wrong principle.

Multiplier tables are designed to establish a relationship between the age of certain types of property and that property’s value as a percentage of the property’s original cost. Thus, in the first year of its placement into operation, property has a value equal to a certain percentage of its original cost. In the fifth year of operation the value is a different percentage of its original cost and in the tenth year yet another percentage. As long as the relationship between the age of the property and its value can be reasonably established, it does not matter what years’ values are used, as long as they are compared

with the same years' original cost. As Newberg testified, the gas transmission study performed by the Staff verified that the multiplier study performed by Mr. Michael Goodwin,³⁷ which was completed and effective in 1996 was still accurate and no changes or adjustments to the gas transmission multiplier tables were necessary, despite the fact the Goodwin's study only covered financial and valuation data through December 1992. Tr. 37-A, p. 26. If a multiplier study is correctly done, there is no reason why the relationships developed between original cost and value will not remain accurate for years to come.³⁸

Petitioners' arguments in this regard simply have no merit. If, as Petitioners argue, valuation information after 1997 was used to develop the tables, and if the original cost information for years after 1997 was not available, the resulting multipliers would not accurately reflect the relationship between original cost and value which the multiplier tables are designed to estimate. The Staff's desire to develop all four of its assigned multiplier tables using the same time frame, *i.e.* December 1997, is a reasonable exercise of judgment in carrying out its assignment. Additionally, as evidenced by the Staff's gas transmission study, which verified the earlier study performed by Goodwin, it is clear that multiplier tables, if properly done, do not have to be constantly reconstructed using the latest available valuation or original cost information. The relationship between the original cost and true cash value of personal property covered by a multiplier table remains relatively constant. Under the multiplier tables, the true cash value of personal

³⁷ An individual acknowledged by Vandermark to be an expert in utility valuation (Tr. 31-A, p. 15) who submitted reports to Vandermark that were then submitted to the STC (Ex. P-105 & R-20).

³⁸ It is recognized that the relationship between original cost and value determined by use of the multiplier tables is dependent upon the property at issue being regulated. It was also clear that if indeed the transmission and distribution property at issue becomes unregulated, the multiplier tables would be reexamined. Newberg, Tr. Vol. 37-B, p. 15; Hilpert, Tr. Vol. 45-A, pp. 30-31.

property that is five years old is the same percentage of its original cost, whether the property is being valued in 1995 or 2005.

Petitioners' counsel indicated at Tr. 40-A, p. 43 that it was an error of law and the adoption of a wrong principle for the Staff not to ask for original cost data for the 1998 calendar year. This assertion is based upon a flawed premise. Properly done, the multiplier tables would reach the same result whether valuation and original cost data through calendar year 1998 were used or valuation and original cost data through calendar year 1997 were used. The relationship between original cost and value by year remains constant. That is the fundamental premise underlying multiplier tables.

B. Capitalization Rate

Petitioners asserted the income approach used by the STC to establish values used in the construction of Tables H and I was improper due to the capitalization rate employed. The STC's capitalization rate is based upon the widely accepted concept of weighted average cost of capital (WACC). Tr. Vol. 37-A, p. 52. WACC is premised on the fact that an investor in property would typically finance property acquisition through issuance of debt and equity. WACC is determined by investigating: (1) its two components, market cost of debt and market cost of equity, and (2) the relative proportions of each that a prudent purchaser of the property would use. Tr. Vol. 37-A, pp. 81-83 and Exhibits P-1, pp. 21-22 and P-2, pp. 21-22.

Petitioners raised issues at trial only with respect to one component of WACC, the cost of equity. The STC used two techniques to determine the cost of the equity component: (1) yield capitalization using a capital asset pricing model (CAPM), and (2)

a direct capitalization approach using Price/Earnings ratios.³⁹ Staff gave direct capitalization more weight than yield capitalization. Exhibit P-8, Bates p. 540 and Exhibit P-9A, Bates p. 594 (where the WACC used is lower than the average of the two methods). Both approaches are used by utility assessors throughout the country to determine the cost of equity and by Staff when it values railroads and telephone companies.⁴⁰ Tr. Vol. 37-A, pp. 50-52. The CAPM (yield capitalization) approach is based on the premise that equity investors require a greater return than debt holders because they face a greater risk. See, Exhibits P-1 and P-2, pp 14-16 and 21-23, AUS Consultants' explanation of the income approach and WACC.

Staff's direct capitalization approach is different from the direct capitalization approach used in the real estate context. *Appraisal of Real Estate*, 11th ed. (1996), ch. 22. Staff's direct capitalization rate here is taken from stock earnings to price ratios. The stock prices and earnings used by Staff were from parent companies owning utility property. Staff used a worksheet model adapted from a worksheet used by the State of Montana (Tr. Vol. 37-A, p. 72).

As shown by Petitioners' expert witness, Dr. Richard R. Simonds, the use of the CAPM to develop capitalization rates to be used in income approaches is well recognized, accepted and used by experts in the field of utility valuation. Tr. Vol. 35-A, pp. 75-77. Petitioners did not offer any evidence that indicated that the Staff's actual development of the CAPM rate was incorrect. While different appraisers may argue

³⁹ Sometimes stated inversely as Earnings/Price.

⁴⁰ The Utilities, however, believe the direct capitalization approach should be used only when the state's laws allow valuation of intangible property. There is substantial controversy as to whether it is appropriate to use the direct capitalization technique (because it values intangibles and can imply equity rates less than debt rates). The controversy is one of the reasons Hilpert used for weighting the income and cost approaches equally. (Tr. Vol. 45-A, pp. 18-23).

whether, in a particular instance, a capitalization rate is too high or too low, such disagreements fall well within the ambit of appraisal judgment, which is not the standard of review to which the Tables are subject. Dr. Simonds indicated that he would prefer his price/earnings ratio rate if he were valuing the T&D property as of the valuation date. Tr. Vol. 33-B, pp. 13-15. However, as explained by Newberg, the Staff preferred to use a more historical price/earnings ratio to more accurately reflect how the rates of return on the subject property react over time. Tr. Vol. 37-A, pp. 74-79. These differences of opinion cannot be considered errors of law or the adoption of a wrong principle. There is no indication in Petitioners' September 27, 2001 response to the Motion that the capitalization rate or projected income stream used by the Staff is incorrect.

C. Reproduction Cost vs. Historical Cost

Petitioners asserted that the STC should employ the use of the Handy-Whitman Index to trend original costs to reproduction cost new less depreciation (RCNLD) as being the proper method for developing a cost estimate of value and that it is a wrong principle to use original or historical cost less depreciation (HCLD) to develop a cost estimate of value.

The evidence produced at trial establishes that utility valuation experts routinely use a historical cost less depreciation (net book value) cost approach when valuing a regulated utility property. Both Chapman and Newberg, who were the Staff utility valuation experts when the multiplier study was conducted, testified that it is widely accepted to use a net book value cost approach in valuing regulated public utilities (Tr. Vol. 2-A, pp. 72-75 and Tr. Vol. 37-A, pp. 87-92). Sansoucy also indicated that a historical cost less depreciation approach should be considered in establishing value for a

regulated utility. Tr. Vol. 28-B, p. 8. A number of states use a historical cost less depreciation approach when establishing values for regulated public utilities. Hilpert testified that he had surveyed other states in an attempt to ascertain how they valued regulated utility property. The responses to that survey indicated that a number of states relied on a historical cost less depreciation (net book value) method of determining a cost approach for regulated utility property (Tr. Vol. 45-A, pp. 10-11, 18 and Exhibits R-31 a through q).

Contrary to Petitioners' assertions, it is clear that the use of historical cost less depreciation to value regulated public utilities is a well-recognized, acceptable and appropriate methodology. Its use cannot be deemed to be either an error of law or the adoption of a wrong principle.

D. Personal Property vs. Real Property

The general property tax act, section 8(g); MCL 211.8(g), mandates that the public utility T&D property at issue be assessed and taxed as personal property. Petitioners argued that such property has attributes of what would ordinarily be considered real property. Petitioners asserted that treating T&D property as personal rather than real is an error of law or adoption of a wrong principle. For example, Petitioners' counsel asserted that the STC should use the same type of multipliers for T&D property as used for public utility power plants (Tr. Vol. 6-B, p. 50) and that it is an error of law or adoption of a wrong principle to value T&D property without recognizing its real property characteristics (Tr. Vol. 46-A, p. 51).

As noted, section 8(g); MCL 211.8(g), requires public utility T&D property to be assessed and taxed as personal property; whether such property is treated as personal or

real, the valuation standard is the same, *viz.*, true cash (market) value. It is immaterial whether a certain multiplier is used for real property and another multiplier for personal property. The use of a multiplier is appropriate as long as it results in an indication of true cash value. In the instant case the evidence presented does not prove that the use of the Tables H and I adopted by the STC fail to develop acceptable indicators of true cash value for the public utility T&D property at issue. The fact that different multiplier tables are developed for real and personal property does not equate to an error of law or the adoption of a wrong principle.

E. Uniformity

Petitioners asserted that the use of Table H and I results in non-uniform assessment and taxation of public utility T&D property contrary to the Michigan Constitution 1963, art 9, §3 and the general property tax act, section 27; MCL 211.27. In support of this claim, Petitioners argue that values of T&D property resulting from the use of Tables H and I would be non-uniform with values of like non-utility owned property derived by applying the unit-in-place method contained in Chapter XII of the *Assessor's Manual*.

Using Petitioners' visual aid no. 5, Petitioners witness, Vandermark, attempted to illustrate the differing values of an electrical transformer resulting from use of the Chapter XII unit-in-place method and from use of the appropriate Table H multiplier. Tr. Vol. 16-B, pp. 8-14. On cross-examination, he realized that there were some "math" errors in visual aid no. 5, and was given the opportunity to review it overnight. Tr. Vol. 20-B, pp. 111-118. The next morning he testified that the transformer would have been valued as part of the building in which it was installed. Tr. Vol. 12-A, p. 8. He further

acknowledged that the unit-in-place method is ordinarily used for industrial buildings, and that the depreciation applied is the depreciation for the building as a whole, not for any individual component of the building. Tr. Vol. 21-A, pp. 9-10. He further acknowledged that the use of the unit-in-place method would not arrive at the true cash value of a specific component of the industrial building, but would indicate the component's contribution to the value of the building as a whole. Tr. Vol. 21-A, pp. 10-12. He also testified that the use of the unit-in-place method did not specifically account for any functional obsolescence in the component and that the purpose of visual aid no. 5 was not to establish a specific value for the component, but rather to indicate the value that the component would contribute to the building as a whole. Tr. Vol. 21-A, pp. 13-16.

Vandermark correctly noted that the use of the unit-in-place method is designed to value a unit or a group of assets combined into a whole. It is designed to value real property, together with all its varied components. It is not designed to value a single component of an industrial building, which is what Vandermark attempted to do through visual aid no. 5; instead, it is similar to multiplier tables. Neither is designed, nor intended, to value individual assets. Therefore any comparisons between individual items valued both by multiplier tables and by the unit-in-place method are meaningless.

Petitioners also asserted that uniformity requires a uniform method and mode of assessment and taxation relying on *Titus v STC*, 374 Mich. 426; 132 NW2d 647 (1995). But Petitioners reliance on *Titus* is misplaced. *Titus* does not require that all taxable property be valued and assessed by the same methods and procedures. As the Court of Appeals later held, various approaches to value may be used:

... [t]hat *Titus* did not establish a blanket prohibition against the use of varying approaches to valuation is further borne out in *Fisher-New Center Co v State Tax Comm*, 380 Mich 340; 157 NW2d 271 (1968), a case decided after *Titus*, wherein the Supreme Court specifically noted “that a uniform approach to valuation does not always result in uniform assessment. . . . While uniform approach may be desirable, it is not the ultimate goal of valuation. The ultimate goal is uniform true cash values. They are not necessarily achieved by a single uniform approach.”

Kent County v STC, 140 Mich App 770; 786; 336 NW2d 206 (1985).

The issue presented in this case is not whether the methodologies used to develop valuations for the utility property in question are uniform with methodologies used to develop valuations for other property, but whether the use of the multiplier tables at issue result in acceptable indicators of true cash value for the utility property being valued. The evidence presented does not prove that the use of the multiplier tables adopted by the STC fail to result in acceptable indicators of true cash value.

F. Fifteen Year Floor

Petitioners asserted that multiplier Tables H and I, which have an effective floor of 15 years, improperly value the transmission and distribution property at issue because of this 15-year floor. At page 17 of their November 20, 2000 trial brief, Petitioners note that the Tables at issue have floors of 55% for gas distribution property and 35% for electric transmission and distribution property, which floors become effective in the fifteenth year. According to Petitioners, because almost all transmission and distribution property have effective lives longer than 15 years, and because many older urban areas have older transmission and distribution property which continues to function well and produce large amounts of income, the tables effectively deny these municipalities an important part of their tax base. Petitioners contend that to value different properties at

basically the same percentage of its original cost, when some of these properties may be older than others, or have different physical conditions, locations or life expectancies, is arbitrary. Petitioners' Trial Brief, p. 17.

Petitioners' counsel indicated that to have one multiplier table value assets with differing lives, which range from 15 to 60 years, is a wrong principle. Tr. Vol. 6-B, p. 59. Tr. Vol. 7-B, p. 20, 35. Petitioners' witness, Vandermark, testified that it was an error of law to use multiplier tables to allocate values using a 15-year floor, by indicating that the proposed tables submitted to the STC by the Assessor Group, of which he was a member and which contained 15-year floors, would have, if adopted by the STC, constituted an error of law. Tr. Vol. 17-A, pp. 83-85. While he originally thought that the Assessor Group's multiplier tables were acceptable, during the trial he came to the opposite contradictory conclusion. Tr. Vol. 18-A, pp. 43-44 and Tr. Vol. 19-B, pp. 97-99, 103.

Later, regarding the length of the multiplier tables, Vandermark indicated that it was possible to construct multiplier tables with a 15-year floor if the property to which the multiplier table would be applied has lives in excess of 30 years without committing an error of law or adopting a wrong principle, but it could not be done on a statewide basis and still be lawful for all types of property. Some property could be valued using a 15-year table and other property could not. Tr. Vol. 20-B, pp. 24-26. At Tr. Vol. 20-B, pp. 44-46, he indicated that it was possible to change the floor of a table from something other than 15 years to 15 years, as long as the final answer was acceptable. Additionally, he testified that it was acceptable to change more than one multiplier in the table, again as long as the final result was true cash value. Still later in this testimony he seemed to

contradict himself once again when he indicated that it was not an error of law for the STC to shorten the multiplier tables at issue to 15 years, as long as they produced similar results as the table that extended to 30 years. In this regard, he seemed to return to the premise as set forth in the Assessor Group's July, 9, 1999 letter to the STC (Exhibit P-83, Bates p. 8751).

Petitioners' assertion regarding the length of the tables did not arise until after the STC adopted the multiplier tables at issue. Until that time, Petitioners seemed to be unanimous that a 15-year table was appropriate. The Assessor Group recognized that, for administrative convenience and ease of administration, a 15-year table was appropriate as long as the overall result was similar. (Exhibits P-83, P-84 and P-85). Munck testified that for ease of administration, multiplier tables could be truncated. Tr. Vol. 6-A, pp. 31-33. Morgan clearly indicted that a 15-year table for machinery and equipment was acceptable, even though the lives of property covered under that table were similar in length to that valued under the utility multiplier tables. Tr. Vol. 32-B, pp. 25-26. Vandermark admitted that a table of 15 years of length was appropriate, as long as the total derived using the table was similar to the total that would be derived by using a longer table. Tr. Vol. 20-B, p. 73.

Although Petitioners claimed Respondent STC erred by adopting a table with a 15-year floor, they were faced with the awkward position of having to argue against the position originally advanced by Petitioners themselves through the Assessor Group's recommendation (which was a 15-year floor). We find that Respondent STC accommodated most of the changes requested in a series of written communications by the Assessor Group, including a 15-year floor, in its finally adopted Tables. That some of

Petitioners' witnesses in the Assessor Group changed their minds on the eve of trial, offering sometimes conflicting and contradictory testimony as to what they now wanted to request *supra*, does not impair a finding that the STC's actions were reasonable, responsive to input, and supported by the evidence. The Tribunal finds that the evidence does not prove that the STC's use of a 15-year floor in Tables H and I is an error of law or the adoption of a wrong principle.

G. Equal Weighting Of Cost And Income Approaches

Petitioners' counsel indicated that he believed the final concluded values upon which the STC based multiplier Tables H and I resulted from an improper averaging of the cost and income approaches to value used by the Staff. Tr. Vol. 43-B, pp 19-25.

Reconciliation of the cost and income value indicators is ultimately a matter of appraisal judgment and the STC demonstrated sound judgment. The Tribunal has ruled that weight to be given value indicators is a matter of judgment to which the Tribunal must grant deference. See Order dated November 16, 2000, pp. 1-2. In the words of the Michigan Court of Appeals: "The weighing process involves a considerable amount of judgment and reasonable approximation." *Comstock LDHA v Comstock Twp*, 168 Mich App 755; 760; 425 NW2d 702 (1988) (citing *Consumers Power Co v Port Sheldon Twp*, 91 Mich App 180; 283 NW2d 680 (1979)). *The Appraisal of Real Estate*, 11th ed, further states:

An appraiser relies more on professional experience, expertise, and judgment in reconciliation than in any other part of the valuation process.

Reconciliation requires appraisal judgment and a careful, logical analysis of the procedures that lead to each value indication.

Appropriateness, accuracy, and quantity of evidence are the criteria with which an appraiser forms a meaningful, defensible final value estimate. These criteria are used to analyze multiple value indications within each approach and to reconcile the indications produced by the different approaches into a final estimate of defined value.

Id. at pp. 603-604 (emphasis added).

Hilpert explained why in his judgment an approximately equal weighting to the cost and income indicators was appropriate both in his September 8, 2000 report to the Tribunal (Exhibit R-7c) and in his testimony (Tr. Vol. 45-A, 16-28). The benefits of net book cost are summarized as follows:

- Net book cost is recognized by all independent experts as a valid indicator for regulated utility property. Tr. Vol. 45-A, p.17.
- Net book cost is recognized by not only industry and independent experts but by state tax administrators and experts retained associated with taxing units (*i.e.*, Woolery). *Id.*
- Net book cost is objective: two experts will arrive at the same net book cost. *Id.* at 22.
- Net book cost is an anchor or the hour hand on a watch. The appraiser will never be too far from true cash value by using net book cost (Tr. Vol. 45-A, p. 25).

Net book cost is “directly related to the property type,” provides accuracy because of “correctness of the data,” and is appropriate in this context. *See Appraisal of Real Estate, supra*, pp. 603-604.

Giving some weight to an income approach for income producing property is obviously correct. Hilpert had valid reasons for not giving it more weight than the cost approach:

- Substantial questions existed as to whether the income approach included intangibles. Tr. Vol. 45-A, p. 16.

- The use of stock Earnings/Price ratios to create a capitalization rate is controversial; Hilpert knew they were controversial with both local government and taxpayers when Michael Goodwin used them in the gas transmission table study in the mid-1990s. *Id.*, p. 18-19.
- Earnings/Price ratios can imply debt returns less than equity returns. See Hilpert Tr. Vol. 45-A, p. 23.
- The income approach is more complicated; it has a lot of moving parts. Hilpert Tr. Vol. 45-A, p. 21; see also Exhibit R-32 (material corrections were in income approach, not cost approach).
- Staff previously gave approximately equal weight to its substantially similar income and cost indicators used in its study for gas transmission property (not at issue here), property which is also cost-of-service regulated. *Id.*, pp. 23-24.

Under these facts, both indicators provide meaningful information for valuing utility property, and giving approximately equal weight to both cannot be held to be an error of law or adoption of wrong principles.⁴¹

VII

The Depreciation Error In The Staff Valuation Study Of Gas Distribution Property Requires The STC To Revise The Gas Distribution Table (Table I)

Petitioners claim that data entry errors permeate the Staff's valuation study upon which Tables H and I are based to the extent that the accuracy and validity of the Tables are destroyed. Petitioners' Brief, pp. 26-27.

Data entry errors were made in the Staff's valuation study; however, at trial Respondent placed in evidence as Exhibits R-32 and R-33 the Staff valuation study

⁴¹ Even though Newberg would give a different weighting, he agreed under these facts equal weighting to cost and income was in the zone of reasonableness. His difference with Hilpert was a legitimate difference of appraisal judgment. Tr. Vol. 37-B, p. 15

recomputed with the data entry errors corrected⁴². As corrected for data entry errors, the electric transmission and distribution study did not change the reconciled value conclusion reached by the Staff that was used by the STC to develop Table H for electric transmission and distribution property. See Exhibit R-33; Tr. Vol. 37-B, pp. 26, 53.

Only one error affected the reconciled value for gas distribution property in the Staff's valuation study. In the Staff's income approach, the depreciation for Michigan Consolidated Gas Company was inadvertently substituted in the study for that applicable to Consumers Energy Company. As corrected for this error, the recomputed reconciled value for the gas distribution property is \$200 million less than that originally determined by the Staff. Tr. Vol. 37-B pp. 51-53. As corrected, the reconciled value (\$1.6 billion) for the gas distribution property is less than the reconciled value (\$1.8 billion) used by the STC in developing Table I for gas distribution property. Tr. Vol. 37-B p. 56; Exhibit R-32; Exhibit R-7aD, p. 2.

The Tribunal concludes that the STC did not commit an error of law or adopt a wrong principle in adopting Table H, the electric transmission and distribution original cost multipliers, as data entry errors did not change the Staff's reconciled value conclusion that was used by the STC to develop Table H. Given the magnitude of the effect of the depreciation data entry error on the reconciled value of gas distribution property, Table I must be remanded to the STC for revision to account for the corrected

⁴² Petitioners address the number of errors, but the "number" of errors is not only largely irrelevant, but overstated. For example, Consumers Energy's electric T&D spreadsheet had '93 data entered into the '92 data column (Ex. R-33, page 599). This is really one error, not a separate error for each line in the data column. The gas distribution study had the insertion of the Michigan Consolidated depreciation data for that applicable to Consumers Energy. Other errors were readily explained by Newberg. Once an incorrect spreadsheet is inserted in one portion of the study, calculations from that data cascade onto various other pages so that one improperly inserted spreadsheet can cause a change in several numbers. But, identifying the cause and correcting the changes was a relatively simple task, as demonstrated by Newberg. See Ex. R-33 (electric) and Ex. R-32 (gas); Tr. Vol. 37-B, pp. 26-55.

\$1.6 billion reconciled value for gas distribution property set forth in Exhibit R-32. The Tribunal finds and concludes that the methodology used by the STC to develop and construct multiplier Tables H and I for use as a mass appraisal tool to value and assess regulated public utility T&D property does not constitute an error of law or adoption of a wrong principle.

The record demonstrates that the STC, in adopting personal property multiplier Tables H and I, acted lawfully in accordance with its responsibilities and authority under the general property tax act. Its judgment in this matter was informed by surveys of other states' methodologies, BDO Seidman recommendations, Staff valuation and multiplier studies, written and oral submissions by interested parties and its own investigations. It obtained, weighed, and diligently considered substantial and relevant data in exercising its judgment in adopting utility personal property multiplier Tables H and I.

JUDGMENT

IT IS ORDERED that Table I is remanded to Respondent STC for revision to account for the corrected \$1.6 billion reconciled value for gas distribution property in accordance with Exhibit R-32;

IT IS FURTHER ORDERED that Respondent STC's Motion for Judgment is granted and Tables H and I are affirmed in all respects except as provided above in respect of Table I.

MICHIGAN TAX TRIBUNAL

Entered: April 5, 2002