

**STATE BOARD OF EQUALIZATION  
OPEN MEETING  
MINUTES OF MEETING HELD AUGUST 14, 2024**

In attendance: Commissioners Paul Woods, Jeff McCray, Janet Moyle, and Jared Zwygart. Elisa Magnuson and Nathan Nielson, Deputies Attorney General. This meeting was open to the public and many guests attended online.

Commissioner Woods, Chairman for the State Board of Equalization, reconvened the State Board of Equalization for 2024 (Board) at 9:00 a.m. August 14, 2024.

Commissioner Woods opened the meeting noting that the first item for consideration today is the action item to discuss and approve, modify, or reverse the recommendations of staff for Uniformity Adjustments to Operating Property (Railroad Revitalization and Regulatory Reform Act (4-R) and Idaho State Supreme Court directive) for operating property to be afforded the same availability as the railroads under the 4-R Act.

Commissioner Woods recounted the history, as he understands it. In 2020, Idaho Power and Avista filed an appeal saying they should be afforded the equity assessment evaluation for operating property under the proportionality and uniformity requirements set out in Article 7, sections 2 and 5 of the Idaho Constitution. The state argued the federal option only applied to federal entities and not operating properties, that there was a process in place to evaluate whether discrimination occurred. The state prevailed in that argument at the District Court, and it was appealed to the Supreme Court. On May 17, 2023, the Supreme Court reversed the District Court's decision and found in favor of the appellants. That was just before the State Board of Equalization last year. Several properties appealed to the State Board of Equalization last year. Everyone was grappling with the reversal of the decision at the Board of Equalization last year. Those properties that appealed last year, and those that didn't, were determined to need an adjustment based on the ruling and were given that during the Board of Equalization. This year, staff has looked at the methodology and adjusted this year, compared to the way it was done in 2023. They continue to look at the methodology and to determine what makes the most sense for Idaho. Staff have made a recommendation, and he doesn't think the Board needs to go over it again. Staff is available for questions. The matter is before the Board for discussion and to adopt, or modify, the recommendation.

Commissioner Moyle opened discussion asking Alan Dornfest, Property Tax Division Policy Bureau Chief whether the Property tax Division overstepped their authority saying the Board's decisions last year were based on appeals, not to adjust all the other 100 companies they adjusted. Mr. Dornfest said he believes this Board adopted the recommendations staff made. He does not believe it was related to those decisions. Commissioner Moyle said she disagrees. What was before the Board were specific appeals and she has a problem with 17 official decisions and then 100 companies given an adjustment. She just wants to clarify that there was some misunderstanding and miscommunications. Without specific decisions, she feels some authority was overstepped.

Commissioner Woods said that in looking at the Supreme Court decision, the argument is uniformity and proportionality and within that decision is a duty, whether companies appealed or not, to be uniform in the application of the methodology. Commissioner Moyle said the question before

the Board was the specific appeals and they didn't have the uniformity questions except for those companies that specifically appealed and asked. That's where her problem lies.

Commissioner McCray said he reviewed Mr. Dornfest's information from last year that shows a similar analysis for each of the companies that are presented this year. He said the methodology was the same then, adjusting based upon the work Mr. Dornfest's team has done. The Board voted on that recommendation last year, the same as we're being asked to do this year. Commissioner Moyle agrees that the analysis was done on every company, but there wasn't a decision from the Board. Commissioner McCray said he believes the Board adopted the recommendation of staff. Mr. Dornfest said that what Commissioner McCray just said was clearly their understanding in applying those adjustments. Commissioner Zwycart said it was also his understanding when they voted on it last year, they voted on the whole thing. Commissioner Moyle said there was a misunderstanding because the commissioners signed individual decisions, and they did not sign that every company would receive an adjustment. She suggested that in the future, to avoid this kind of misunderstanding, she believes there should be signed decisions.

Commissioner Woods said he understands the potential confusion from last year, but as they sit today, and as they've read the Supreme Court decision, and have looked at the issue, asking people to appeal seems to be a bit of process over purpose. If being an operating company qualifies them, then that's it. The Tax Commission does the calculations. The argument was uniformity, which is a duty of the Board of Equalization under the constitution to execute. Setting up a process where only those who appeal receive the adjustment, is against our duty to be uniform in the application of this methodology that we're now directed by the court to implement for all operating property. Properties can ask for the adjustment, but legal has said that with the current appellants before the Board, and that the decision applies to all operating property, there's a duty to simply apply that uniformly across all operating property. That's why staff have presented the recommendation before the Board today. Commissioner Moyle said she appreciates that and understands what is before the Board today is different. Last year, there were specific appeals. This is not finished in the court system. She wants to ensure that this is officially before the Board, either as an appeal or as a stipulation, so everyone understands what is before the Board.

Commissioner Woods said the decision today is for adjustments for all operating property. This is all in the memo submitted by Mr. Dornfest. Mr. Dornfest said the adjustments presented for approval of the Board would not encompass those companies that have appealed their values.

Nathan Nielson, Deputy Attorney General, was recognized on a point of procedure and process. It's on the agenda for August 26, 2024, for Jerott Rudd, Property Tax Operating Property Bureau Chief, to present the values of the non-appealing operating property companies. At that time, the Board will review and approve those property values and that will incorporate whether there is a 4-R adjustment applied to each of those companies. The question is not before the Board today; it will be on August 26. The question for today is whether Mr. Dornfest's calculations of the 4-R adjustments as staff has presented will be adopted as the correct calculation. Mr. Dornfest said the values presented by Mr. Rudd last year, on the last day equivalent to August 26 this year of the State Board of Equalization, already incorporated the adjustments from the August 10 memo. He thought this Board would decide today to instruct Mr. Rudd to either go forward or not go forward with these adjustments, irrespective of any other adjustments that might be made because of an appeal. Mr. Nielson said today's decision is to determine whether the calculations in the 4-R adjustment were appropriate and correct. Mr. Nielson apologized for any confusion. Commissioner Woods said we're all trying to get our footing with this new process.

**Commissioner McCray moved to adopt the recommendations for adjustments to achieve compliance with 4-Rs Act requirements in Idaho Supreme Court directive concerning uniformity for the following companies in the table, as published by Mr. Dornfest. Commissioner Zwygart seconded the motion. Commissioner Woods conducted a roll call vote: Commissioner McCray, yes; Commissioner Moyle, no; Commissioner Zwygart, yes. The motion carries.**

Next on the agenda is the presentation of appeal by PacifiCorp. He officially opened the public meeting for the presentation of this appeal. An oath will be administered for all witnesses both with the state and PacifiCorp. Maria Young, Assistant to the Board, administered the oath.

The hearing opened for **Docket No. 0-792-519-680, PacifiCorp**. David Crapo, Attorney, represents PacifiCorp. He noted he participated in the prehearing conference and indicated he wanted to be as informal as possible and answer questions as asked. Matt Paz, the Assistant Property Tax Director for PacifiCorp is also present to answer questions and fill in gaps as they move through their presentation.

They submitted a Power Point presentation, and a reply brief to the Board that summarizes their arguments. They have identified four concerns on the valuation for this year. The first is the equalization argument that he covered briefly. The second argument is that net operating income as calculated by the Bureau (Tax Commission staff), doesn't follow statute Idaho Code section 63-205. The first two are the main arguments they have today. The third is the correction of the capitalization (cap) rate and they believe there is a minor adjustment, but if you make the adjustment for the net operating income (NOI), that goes away. The removal of obsolescence from the cost approach, which is at 20% weighting (or a no weighting), resolves the issue, by their recommendation.

In PacifiCorp's reply brief, they show that Mr. Dornfest's calculations identify a 9.13% equalization adjustment for PacifiCorp. They believe that adjustment should be made, and he reviewed the reasons they believe so, and asked for the adjustment to be applied.

The second argument is the net operating income. Mr. Crapo reviewed Idaho Code section 63-205B(1)(b) and continued through his presentation saying their concern is that staff didn't follow statute. The Bureau's methodology for adjusting expenses is arbitrary and lacks specificity. PacifiCorp provided, in their brief, a list of wildfire claims against utilities. Many are more than \$1 billion each. The Bureau ignored the wildfire accrual as though it never occurred. Mr. Crapo continued to review the presentation and highlighted a summary statement of Dr. Aswath Damodaran, a professor at New York University and often referred to by various state jurisdictions and taxpayers for valuation principles. (The state referred to Dr. Damodaran; therefore, PacifiCorp added this section of their presentation.) PacifiCorp believes the Bureau's adjustment is arbitrary and capricious because the adjustments are not specifically identified and are not accounted for as recurring.

PacifiCorp recommends one of two proposals. One is to use the actual NOI of \$231 million and using a four-year average for \$873 million estimated NOI. Use zero weight on the cost approach, and 100% weight on the income approach because a willing buyer will be most interested in what they can earn from the property. PacifiCorp believes that is the appropriate fair market value, then equalize with 9.13%. Option two uses a four-year average, as directed by statute, then uses the 20% correlation of statute on the cost approach and 80% on the income approach. They believe either of these options is consistent with the statute. The purpose today is to determine market value. A willing

buyer will pay attention to a \$1.67 billion accrual for wildfire and for prior year wildfires. The staff's methodology has ignored the accrual.

Commissioner Moyle noted that the wildfire expenses he submitted are all for other states and asked if there are any in Idaho. Mr. Crapo said they can occur in all western states. They've identified Oregon, California, and Washington. Commissioner Moyle asked if he's paying on Idaho wildfires. He said they may have at some point, but he isn't aware of an accrual for an Idaho fire. Matt Paz said he doesn't think there are any for Idaho but it's a unitary assessment, so they're looking at the operating property on the entire unit, which is in 10 states.

Matt Shriver, Deputy Attorney General assigned to the Tax Commission, and representing Operating Property Bureau, explained that Erica Taggart, Senior Tax Appraiser will make a presentation. Mr. Shriver spoke briefly about the legal issues in response to Mr. Crapo. He said the Bureau followed the specific state and federal statutes and rules. He didn't address the 4-Rs Act much because the decision was just issued August 13, 2024. They're still processing that and the briefing he provided explains the Bureau's positions on the Idaho Power case sufficiently. He agrees generally with Mr. Crapo's characterization of the issues. The difference of opinion comes with the ratio used to compare to Mr. Dornfest's numbers.

Idaho Code section 63-205B provides that in the income approach, income to be capitalized will be normalized. It goes on to explain how to do that. The state believes the method used is consistent with statute This approximately \$1.7 billion injuries and damage expense, as demonstrated by their historical record, affects their profit and loss abnormally. They have a net negative net operating expense and he's unsure how unusual that is, nor how far back he would need to look.

Mr. Shriver conceded that the appraisal didn't specify an item that was adjusted for, other than the NOI was negative, saying he believes that is self-evident. He doesn't believe there's any confusion about why normalization was looked at for this year. The statute allows for unusual, non-recurring items. This was an unusual case and its the first time they've found the need for an additional adjustment, and it's permissible under statute.

The wildfire liability expense is a recurring bill that is within a normal range, but spikes unexpectedly, or extraordinarily, or in a non-recurring way. It wasn't foreseeable, and isn't normal, and affects the bottom line abnormally. A reasonable investor would not expect that expense to recur in the future. The language in the statute for non-recurring is a way for them to account for this normalization technique that Damodaran and others discuss for these types of extraordinary items. The Bureau's methodology is consistent with PacifiCorp's history of earnings and consistent with good and generally accepted appraisal practices. Mr. Shriver submits to the Board that one massive spike in expense that has been relatively volatile, but volatile within a certain range, does not a pattern make. The Bureau's normalization methodology is consistent with law and good appraisal techniques, and it better estimates the income anticipated to be earned by PacifiCorp into the future and therefore, the Bureau respectfully request the Board uphold the bureau's normalization methodology and determination regarding the net operating income used in the income approach.

Mr. Shriver addressed PacifiCorp's two proposals saying it's important to remember that market value is the end question of an appraisal. The Bureau argues that the 80/20 weighting on the cost approach is incorrect weighting because it does not closely mirror investor behavior. The Idaho Supreme Court says "...[t]here is no one factor that can be said to be the key to property appraisal of taxable property," instead, it's through reconciling and weighting the different approaches that will

arrive at market value. Tax rules and statutes acknowledge this by allowing the appraisers to consider a combination of approaches. PacifiCorp asks the Board to ignore this because it leads to a lower tax bill. Market value is defined as the amount that a willing buyer and a willing seller would agree to, and it becomes obvious they cannot solely rely on the income approach. Doing so completely focuses the question on a buyer's perspective without accounting for a seller's desire to recoup any value they've invested. Both pieces must be considered and reconciled to arrive at an overall market value.

In conclusion, the income approach applied by the Bureau aligns with Idaho Code section 63-205B and nationally recognized appraisal methodologies and they ask the Board to find that PacifiCorp has not carried its burden to show that the Bureau's appraisal is in any way incorrect.

Commissioner Zwycart asked if it was an unusual wildfire, why didn't they just take the wildfire expense out of the NOI to come back to correct net income. Mr. Shriver said Ms. Taggart will cover that. Commissioner Zwycart said PacifiCorp has said they have been accruing expenses due to wildfires before 2023 and he asked if they assessed those as extraordinary in previous years. Mr. Shriver said the approach the Bureau used accounted for those expenses. They haven't said that wildfires are not recurring, but they cannot predict that all wildfires will incur the \$1.7 billion expense they had in 2023. That is an unusual occurrence therefore, they normalized that amount.

Commissioner McCray noted PacifiCorp has talked about the recent decision of the court. He asked about the specific effect that decision has on the conversation today. He realizes it was only issued yesterday, but asked if they have a sense of how it directs the Board in this case. Commissioner Woods said he discussed it with the attorneys and no decision was made about whether to appeal this decision. It's been stipulated with other companies that if the decision is in favor of Idaho Power and Avista, and the Tax Commission doesn't appeal, the adjustment will occur. He presumes that would be the same for PacifiCorp. They will all be treated the same. The Board has said the calculation used to arrive at the 9.13% is correct. The case is still in limbo until the state decides whether to appeal the decision. It's an awkward situation. Mr. Nielson added that Commissioner Woods summarized the situation well. The state must consider whether an appeal is appropriate. Commissioner McCray said he hasn't read the decision. Mr. Crapo was recognized and briefly explained the decision, as it applies to PacifiCorp, saying that the second appraisal method by the state is incorrect. The original assessment at 100% is correct and allows for the 5% differential that would allow the adjustment to be applied. Commissioner Woods agreed saying it's still an open-ended situation. Commissioner McCray clarified that it only then applies to issue number one in the PacifiCorp appeal. Mr. Crapo agreed.

Erica Taggart, Senior Tax Appraiser, was recognized and said she appraised PacifiCorp this year. She discussed the appraisal process and the normalized income. She began her presentation by reviewing the statute and the Western States Association of Tax Administrators (WSATA) handbook regarding the purpose of normalization. She identified that the \$1.7 billion was submitted on an injury and damages line, in the Federal Energy Regulatory Commission (FERC), Account 925 Form 1. This methodology is consistent with appraisal practices and that they've used in the past. Ms. Taggart reviewed the method she used to appraise PacifiCorp saying the \$1.7 billion is specifically from one set of fires and payments for that, and it's unusual that it would be so high, or have such an impact on their income. The goal is market value, and she normalized based on historic information due to the maturity of PacifiCorp. Extraordinary wildfire litigation payments at this level have not recurred in at least the last twelve years. They've already begun mitigation efforts. She asks the Board to uphold her value.

Commissioner Zwygart said she answered his earlier questions. Commissioner Woods summarized Ms. Taggart's presentation.

Mr. Crapo was recognized to respond to Ms. Taggart. He denied that PacifiCorp appealed to have a lower tax bill. They are here to get to fair market value. They have a fiduciary responsibility to their ratepayers to ensure their expenses and income are reasonable and to be accused of that is wrong. Regarding their burden of proof: when staff doesn't follow statute, it's de facto incorrect; they've met their burden. He refuted Ms. Taggart's testimony saying, at the end of her presentation she said that wildfires will occur and that the company is taking steps to mitigate. Why would they mitigate something that wouldn't happen again? He's provided the response in his briefing that this will happen again and has happened in the past. He continued to detail the differences in methodology saying using a 10-year average is incorrect. Their expenses went up by more than \$600 million, not associated with the wildfires. That is completely ignored because Ms. Taggart never used 2023. He argued that the state had no issue with accruals for wildfires in prior years when they were \$136 million, but now that it's a bigger number, it shouldn't be ignored, it should be normalized. Mr. Crapo asked the Board to apply common sense which says an adjustment should be made using a four-year average and they believe that's appropriate. The two proposals they submitted are appropriate and follow statute.

Commissioner McCray asked about the NOI losses for accruals for injuries and damages and whether any actual expenses for claims that have been paid. Mr. Crapo said yes, and will defer to Mr. Paz, but he believes, on the wildfire portion, more than \$600 million has been paid out in accruals, there have been insurance payments, also. He believes PacifiCorp announced another \$175 - \$200 million of actual payments this year. Mr. Paz said \$684 million has been paid through 2023 related to the 2020 wildfires. There were several across Oregon and California in six different counties. There's also a 2022 fire for which some claims have been paid, and an additional \$91 million, and more to come on a settlement. Commissioner McCray referenced the state's slide asking if those payments would be embedded within the injury and damage figures. Mr. Crapo said in 2023, absolutely. Mr. Paz explained how accruals work and are applied.

Commissioner Woods asked Mr. Crapo to comment on his summary of what staff did to arrive at their value. Mr. Crapo understands but they believe it should be done differently. He asked Ms. Taggart to respond to any mischaracterization. Ms. Taggart said that by taking the 10 years before, she took a ratio, not dollar amounts, and put it to their gross revenue so that was a similar ratio. It's not an average of an average, it's saying they've been operating at about 20% for at least the last 12 years. The state uses a non-tax-yield-rate so they wouldn't need to do a tax adjustment. She didn't look directly at the injury and damages because there is no normal.

Commissioner Woods closed the hearing on Docket No. 0-792-519-680 and thanked everyone for their participation. The Board has scheduled time for the decision on this matter for Friday, August 16, 2024. When the Board reconvenes, there will be no discussion with staff. If there are questions of a legal nature, the Deputy Attorneys General will be available to respond. The hearing is closed.

Commissioner Woods recessed the Board until 1:30 p.m.

**Commissioner Woods reconvened the Board. There is a request to modify the agenda to move Item U. on the agenda: Docket No. 0-956-097-536 to be heard first and then to retain the order after that. Commissioner Moyle moved to modify the agenda and asked if there are further amendments required to proceed next week. Commissioner Woods said that will be taken as a second motion. Commissioner Zwygart seconded the motion to modify today's agenda. Commissioner**

**Woods conducted a roll call vote: Commissioner McCray, yes; Commissioner Moyle, yes; Commission Zwygart, yes. The motion passed and the agenda is modified.**

Commissioner Woods opened the public hearing for **Docket No. 0-956-097-536: South Forks Joint Venture, DBA: Lowline Hydro Project**. An oath will be administered for all witnesses both with the state and Hydroelectric Companies. Maria Young, Assistant to the Board, administered the oath.

The hearing opened for **Docket No. 0-956-097-536: South Forks Joint Venture, DBA: Lowline Hydro Project**. Tom Arkoosh, Attorney, represents the Hydroelectric Companies. Mr. Arkoosh took a few minutes to explain the make-up of their case. He said his understanding is that the record of this first hearing will be a part of the record for all the rest of the appeals they've brought. He thinks that will save time. Commissioner Woods thanked Mr. Arkoosh for saying that because that was agreed upon at the prehearing conference and appreciates that.

Mr. Arkoosh said they're looking for the fair market value of these projects. The main focus is to determine the fair market value of the projects through discounted cash flow analysis, and he explained that process. They disagree with the Commission's buildup model and argue that their appraisals are reasonable based on industry estimates and methods.

Mr. Arkoosh called on David Cooper, Certified Public Accountant (CPA), and business owner, including interests in two hydroelectric plants. He has experience with valuations and holds a CPA license and a certificate from the National Association of Certified Valuation Analysts (NACVA). Mr. Cooper has been involved with these operating property appeals since 2017. He contends that there have been inconsistencies in staff appraisals for their projects, with property taxes fluctuating significantly despite consistent kilowatt production. The state incorrectly used the buildup model to calculate a discount rate that is at least 2% too low. The mid-year convention, which assumes all income is collected earlier in the year, is not appropriate for these companies. Expected revenues were calculated based on historical production information and estimates provided by the companies.

Mr. Arkoosh began the presentation for Lowline Hydro which will set the template for the remainder of the companies that have appealed. The state's assessed value of the Lowline project is \$8,434,000. Last year's assessed value was \$5,503,000. After court case adjustments, the value was \$4,402,400. The state's appraisals consistently overstate revenues and underestimate operating expenses by failure to make normalization adjustments for lease royalty costs. Mr. Cooper said there's been a change because of the court case. They are valuing an average of the projects instead of individual ones. There are understated project operating expenses, inconsistent growth assumptions, and a failure to employ conservative valuation assumptions as directed by the court.

Commissioner Moyle asked whether the discounted cashflow method of evaluation was used. Mr. Cooper said it is the method they've always used for the income approach. There's the market approach and the cost approach. Mr. Cooper added an attachment for every project that shows his calculations for the revenue and growth rates. The property on a canal doesn't currently have any operating expenses for royalty leases. Projects in the early stages of their contract may not pay royalties but will pay significant royalties after paying off debt. Appraisals should be based on historical information but consider future income and expenses. Commissioner Woods noted that the information on the operator's statement should be correct if it relates to the value.

Commissioner McCray asked what the bottom line is for South Forks Joint Venture? Mr. Cooper said \$4,531,000. Commissioner McCray asked if this will be located in the same place for each project. Mr. Cooper said it will.

Brett Jarvis, Deputy Attorney General assigned to the Tax Commission and representing Operating Property Bureau for the Hydro Companies, asked for a point of order. It appears they will not be discussing the cost of capital unless the Board has a desire to hear it. Kyle Rayworth, Senior Tax Appraiser, is prepared for that discussion. Commissioner Moyle suggested that argument be dispensed because it isn't in dispute.

The Board recessed briefly.

Commissioner Woods reconvened the hearing and recognized Brett Jarvis and Kyle Rayworth to begin their rebuttal. Mr. Jarvis briefly outlined the legal framework while appraising and valuing these properties. Then Mr. Rayworth will make a presentation on Lowline Hydro Project. There has been discussion about the uniformity clause and the proportionality clause. These are the constitutional loadstar, coupled with market value. This is all discussed in his brief, and he won't go into detail here. The conservative appraisal approach cannot overrule uniformity or proportionality. The judge in his ruling urged to err on the conservative side of the range for market value. He clarified that the proportionality clause says that all property must be assessed at the same proportion of market value across the state. Statute says to assess those at 100% of market value. He has reviewed the appraisals Mr. Rayworth conducted this year and they comport with the seven points Judge Medema instructed them to use when valuing these properties.

Mr. Rayworth began his presentation to address some issues in a broad sense that will come up in subsequent appraisals for these properties. Mr. Rayworth talked about the use of a modified mid-year convention for discounted cash flow models. Mr. Cooper's revenue projections and calculations were questioned for not using accurate data from the company's power purchase agreement (PPA). Growth rates in the power purchase agreement do not match the company's valuation and lack evidence or data to support them. They were directed to use actual expenses over assumptions or averages. The normalization of expenses the appellants have used is contradictory to court directives and not applied uniformly, resulting in inaccurate and unreliable values. The illiquidity sized premium should be lower, around 1 – 2% instead of the current 4.93%. That isn't an adjustment he chose to make this year considering all the other changes that occurred, but there is justification for a lower illiquidity sized premium. Conservative adjustments were made in the tax rate deduction and replacement capital expenditure deductions. To suggest that he failed to employ conservative adjustments is invalid. The value recapture rate for Lowline is less than three years, while the industry average is over ten years.

In closing, the use of end of year convention is absolutely inappropriate for this industry. That is based on documentation and sourced experts that he's included in his submission to the Board. The revenue forecasting growth rate is based on unsound projections and growth due to omission of the company's actual PPA data which the court has told the to use. The overstatement of net operating income is inaccurate; they're understating the revenue and overstating expenses. They're understating NOI, the state is not overstating it. He made conservative assumptions within the process of valuing these projects and it's invalid to suggest that he isn't.

Commissioner Moyle asked if this is the first time Mr. Rayworth has used the modified mid-year convention. He said it is. Commissioner McCray asked if the two major points of difference are



the mid-year convention and cash flow but that the primary distinction of Mr. Rayworth's analysis and Mr. Cooper's is the other expenses, like the royalties. Mr. Rayworth said the normalizations play a big part in the difference in value conclusions for those to which they are applied. The biggest differences are their use of PPA information and actuals as opposed to Mr. Cooper's use of more arbitrary growth rates and the calculations that he made. Commissioner Woods expressed his confusion about the mid-year convention and asked if the calculation is based on receiving revenue 30 days from the end of the month, or 60 days? Mr. Rayworth said his understanding, based on conversations with Mr. Cooper, is that they receive revenues for the duration at the end of the following month. He went on to explain how it's applied. Commissioner Woods then asked about projecting income and the average kilowatt hour per job production. The revenue projections are based on historical data and the average price paid per kilowatt hour. The PPA is broken down annually, not monthly, and includes peak and off-peak hours as well as seasonal rates. Commissioner Moyle asked what the discrepancy is then? Mr. Rayworth said that's their projection of generation and their calculated rate. He has information going back 20 – 30 years for these projects and looks at the stability of generation and where that lies and compares that to the PPA rate, then other operating revenue that has been reported by the company. Commissioner McCray asked Mr. Cooper to explain what he's done. Mr. Cooper explained his process.

Mr. Arkoosh was recognized to respond to Mr. Rayworth. The mid-year convention assumes revenue comes in regularly throughout the year and affects time value of money. Normalization adjustments are necessary in appraisals and using actual expenses without normalization is not a normal process. Commissioner McCray asked about the use of the mid-year convention. Mr. Cooper said the state began using it in 2021 and they contested it. Mr. Rayworth's use of the modified mid-year convention is not a normal process. Commissioner Woods reasserted that last year's value was a product of a settlement negotiation and has an asterisk. Commissioner Zwygart asked about the appellant's presentation and the overstatement and understatement of the state's projection. Commissioner Woods said there's been some progress in trying to come to a common methodology for valuing properties and projection production that is important for uniformity. The settlement agreement includes all cases, even those not yet tried, and there are no pending court cases.

Commissioner Woods closed the hearing on **Docket No. 0-956-097-536: South Forks Joint Venture, DBA: Lowline Hydro Project**. The Board will render a decision on August 26, 2024.

Mr. Arkoosh asked for a brief break to consult with his client. Commissioner Woods recessed for five minutes.

Commissioner Woods reconvened the Board.

Commissioner Woods opened the public hearing for all remaining dockets. The previous testimony of **Docket No. 0-956-097-536: South Forks Joint Venture, DBA: Lowline Hydro Project** will be incorporated into all the remaining dockets. All the remaining dockets are closed with that incorporation, except for **Docket No. 1-723-917-312: American Falls Reservoir DBA: Black Canyon Hydro, Docket 2-029-839-360: Magic Reservoir Hydro, Inc., and 0-195-617-792: Mile 28 Water Power Project, LLC**. The Board will hear additional testimony on these three dockets.

Mr. Arkoosh began by stating there are additional comments beginning with **Docket No. 2-029-839-360: Magic Reservoir Hydro Inc.** Mr. Cooper said this project has similar issues and differences as in the other projects. This plant has a history of five years, but two years show zero production due to insufficient water. The average annual revenue for the plant is estimated to be

\$673,000 based on kilowatt production. Commissioner McCray asked if the average number of future kilowatt hours is just a straight average of the five years. Mr. Cooper said yes, including the zeros. Commissioner Woods asked why there's no production. Mr. Cooper said there's no water.

Mr. Jarvis said, and he's spoken with Mr. Arkoosh, there is a legal problem with some of the discussion that's taking place on this docket. The notice of hearing and the request for appeal listed all the issues related to Magic Reservoir and none of them included the discussion about the weighting on the market approach. There's no allegation that the market approach shouldn't have been included. The appeal listed eight different issues. Legally, it shouldn't be considered. Tax Commission rule 407 governs this proceeding and says that the request must contain the legal and the factual basis for the appeal. There was no legal or factual allegation related to the market approach in the appeal. The rule also says that additional information may be presented by either party at the time of their oral presentations upon agreement between the Tax Commissioners and appealing party. There appears to be no issue with that. It goes on to say that agreement must not be unreasonably withheld by either party. Then it says that such additional information is limited to subject matter and evidence provided at least seven days prior to the hearing. Legally, this is the first they've heard about any issues related to the market approach. He believes it's improper to hear it now since Mr. Rayworth has prepared for 19 properties, but just found out about this argument. Commissioner Woods asked legal counsel to the Board for input. Matt Shriver, Deputy Attorney General assigned to the Tax Commission responded that under Tax Commission rule 407, the Board may accept evidence that has been objected to subject to a ruling by the Commissioners acceptance. The Board can listen to what Mr. Arkoosh says on the matter and then decide later if the rule bars consideration of the evidence presented. Mr. Jarvis has submitted his objection, now the board can listen to the argument, and later decide whether to disregard it because it wasn't properly noticed. Mr. Arkoosh said he believes their appeal properly covers it. He believes they have fair legal standard. The factual allegations are the first sentence indicates market value determinations of operating property must be made through procedures, methods, and techniques accepted by a nationally recognized appraisal and evaluation organization. Commissioner Woods responded that the state will not be penalized if they choose not to respond. The matter they're bringing forth is the way the property is treated given the fact that it doesn't generate revenue every year.

Mr. Jarvis said they will respond. Mr. Rayworth said he didn't prepare to address this issue because it wasn't an allegation. The market approach he used is included in the appraisal with the comparable sales and their data. Based on the actual data used to perform the income approach produced a value that was almost 90% below where it was, it didn't provide a reasonable estimate of value. Based on its conclusion, it appeared unreliable.

Commissioner Zwuygart said that according to information received from Mr. Arkoosh, they are missing documentation under the Twin Falls Energy Lower Low Line and Midway Power indicating the state's information is incorrect. That is Docket No. 0-089-449-472 There's nothing indicating they arrived at a different value, so why is the Board considering it? Mr. Arkoosh said that before the hearings on the remainder of dockets was closed, those two appeals were withdrawn orally. Midway Power is Docket No. 1-455-481-856.

Commissioner Woods returned the hearing to the Magic Reservoir docket asking if there are any other questions. The state has presented their objection. Commissioner McCray asked how Mr. Rayworth accounted for the variable production of power in the Magic Reservoir project? Mr. Rayworth said their projection was similar to Mr. Cooper's.

Commissioner Woods said before he closes the hearing, there is an objection to the discussion on the intermittent revenue generation for this project. He asks how the Board reconciles and makes a final decision considering the objection? Elisa Magnuson, Lead Deputy Attorney General representing the Board, replied that he can close the hearing and move forward. Mr. Arkoosh confirmed that the appraisals are a part of record before the Board. He asked the Board to review that appraisal. Mr. Cooper asserted there is still missing information and the state's process cannot be replicated. Commissioner Woods closed the hearing for **Docket No. 2-029-839-360: Magic Reservoir Hydro Inc.**

Commissioner Woods opened the hearing for **Docket No. 1-723-917-312: American Falls Reservoir DBA: Black Canyon Hydro.** The testimony heard earlier is incorporated by reference. Mr. Cooper said this is simple. The state used the cost indicator. The operator recommends shutting down the plant due to lack of revenue and zero salvage value. Commissioner Moyle questioned whether that equipment couldn't be used in another facility. Mr. Cooper said no. She followed up asking whether it is still an active plant. Mr. Cooper said it is. Commissioner Zwygart noted, according to the report, that it is producing some electricity for some months. Mr. Cooper said on an annualized basis, it ranges from \$5,000 as a low, up to \$28,000 as a high. Mr. Cooper responded to Commissioner McCray that they are under contract until they have permission to shut it down.

Mr. Rayworth said the appellants are saying the plant is worth nothing even though it's still an active plant. There is value as long as they continue to produce generation. He's received no indication that the operator intends to close the plant. The expenses of the plant are high due to a substantial increase in salaries.

Commissioner McCray asked Mr. Cooper about the negative power generation and what has significantly changed in the facility to show the change in power generation from year to year. Mr. Cooper responded the power generation from the facility has fluctuated due to inconsistent water supply from the canal connected to Magic Reservoir. There is disagreement over the location and naming convention of the facility, but it is confirmed to be part of the Snake River Reservoir and it's the American Falls water system. Commissioner Woods asked Mr. Rayworth about his statement indicating the plant has useful life remaining.

Commissioner Woods closed the hearing for **Docket No. 1-723-917-312: American Falls Reservoir DBA: Black Canyon Hydro.**

Commissioner Woods opened the hearing for **Docket No. 0-195-617-792: Mile 28 Water Power Project, LLC.** Mr. Cooper said the state arrived at a negative income value. He found positive cash flow information on this project. Mr. Rayworth responded said the value this year is based on the court's directives. They used the cost approach instead of the income approach. This is an active plant. There are errors in the total revenue values and what is reported on the operator's statement. Commissioner Moyle asked him to explain the negative income. Projects in the industry often fail to accurately report expenses, leading to incomplete information. Mr. Cooper responded to Commissioner Zwygart's question that the lack of communication between the state and operators hinders the accuracy of the valuations. Mr. Rayworth replied that they are welcome to supply any information they feel is relevant to ensure an accurate assessment.

Commissioner Woods closed the hearing for **Docket No. 0-195-617-792: Mile 28 Water Power Project, LLC.** That concludes the agenda for today.

Commissioner McCray asked for a spreadsheet showing each of the hydro power projects with the state's assessed value and the recommended value from Mr. Arkoosh and Mr. Cooper. Commissioner Zwygart would also like that information. Mr. Rayworth said that is included in their presentation. The Commissioners request a comprehensive spreadsheet with that information all in one place.

Ms. Magnuson asked Commissioner Woods to clarify which dockets were withdrawn. **Docket No. 0-089-449-472: Lower Lowline, LLC and Docket No. 1-455-481-856: Midway Power, LLC** were withdrawn.

Commissioner Woods recessed the Board until 9:00 a.m. Friday, August 16, 2024.

Maria Young  
Secretary

Paul Woods  
Chairman of the Idaho State Board of Equalization