

Public Service Company of New Hampshire
v.
Town of Deerfield

Docket Nos. 1369-81, 2228-82, 2617-83

DECISION

A hearing in this appeal was held, as scheduled, on December 4, 1989.

The Taxpayer was represented by Margaret H. Nelson, Esq., Eaton W. Tarbell, Esq., David Moody, Appraiser, Stone & Webster, and Leonard Gerzon, Public Service Company of New Hampshire (hereafter PSNH). The Town was represented by William J. Maley, Town Administrator, Richard Upton, Esq., and David D. MacArthur, Appraiser.

The Taxpayer appeals, pursuant to RSA 76:16-a, the following assessments:

1981 tax year	\$6,445,100
1982 tax year	\$12,822,100
1983 tax year	\$12,822,100

The property consisted of a transmission plant, including a substation, and a distribution plant on supporting land and rights-of-way.

The parties stipulated as follows:

1. PSNH has complied with all procedural requirements to pursue the above referenced tax appeals, including the submission of a timely and sufficient inventory where required, the filing of a timely application for Abatement with the Board of Selectmen or Board of Assessors, and the filing of

a timely Petition for Abatement with the New Hampshire Board of Tax and Land Appeals or its predecessor, the Board of Taxation ("BTLA").

2. To determine the assessable value of PSNH's taxable property, the parties will utilize the equalization ratios determined by the State of New Hampshire Department of Revenue Administration ("DRA") for Deerfield for the pertinent tax years. The equalization ratios are:

34 percent as of April 1, 1981

59 percent as of April 1, 1982

63 percent as of April 1, 1983

3. December 31 may be used as a proxy for the following April 1 for matters drawn from PSNH's books and records.

4. For the purpose of these proceedings, the figure of \$397,800.00 shall represent the 100 percent fair market value of PSNH's land, rights of way and easements in Deerfield. Consistent with Stipulation 2 above, the assessable value of PSNH's land, rights of way and easements shall be determined by application of the pertinent equalization ratio for the tax year in question.

5. The highest and best use of PSNH's taxable property whose valuation is the subject of these proceedings is as part of an integrated, regulated public utility system.

6. The only issue for the BTLA's determination is the fair market value of PSNH's taxable property, other than PSNH's land, rights of way and easements, as of April 1 of each year in contest.

MARKET VALUE

In regard to the determination of market value the Board rules as follows.

In appraising value for ad valorem taxation purposes pursuant to RSA 75:1, "full and true value in money" is defined as the market value or the price which the property will bring in a fair market after reasonable efforts have been made to find the purchaser who will give the highest price for it. Public Service Co. v. Seabrook, 126 N.H. 740 (1985); Public Service Co. v. New Hampton, 101 N.H. 142, 146 (1957); Trustees of Phillips Exeter Academy v. Exeter, 92 N.H. 473, 481 (1943); Winnepesaukee v. Gilford, 67 N.H. 514, 515 (1893). "The value of property is what it is worth in money, what it will bring in money to the seller, or what it will cost the buyer to obtain it." Grafton County Electric Light Co. v. State, 78 N.H. 330, 334. The definition of fair market value for eminent domain purposes is in harmony with the definition for tax purposes. 590 Realty v. Keene, 122 N.H. 284, 287 (1982).

The test of market value presupposes a market. However, utility-company property is rarely bought and sold, and when an exchange does take place it is usually because of a taking by eminent domain, a merger, or an acquisition. "In instances such as this where only a part of an integrated system is involved, the difficulty, if not the impossibility of finding an actual customer, especially where, as here, the owner has a lawful monopoly in the surrounding area, is obvious." Public Service Co. v. New Hampton, supra at 146. Nevertheless, in determining market value the Petitioner, itself, may

be considered a hypothetical buyer whose idea of a fair purchase price would depend largely on the price it would have to pay for a new equivalent plant.

Public Service Co. v. Seabrook, supra at 742; Public Service Co. v. New Hampton, supra, 146-47, 147-48.

Because of the absence of direct evidence of sales prices of utility property on the open market, in determining value the courts have looked to those factors "that ought to influence the judgment of a seller and a buyer in reaching a fair price." Assessors of Quincy v. Boston Consolidated Gas Co. 309 Mass. 60, 66 (1984).

In New Hampshire "all relevant factors to property value should be considered when making an appraisal in order to arrive at a just result." Steele v. Town of Allenstown, 124 N.H. 487, 491 (1984), (quoting Paras v. Portsmouth, 115 N.H. 63, 67-68 (1975)). In Steele, supra, p. 492, government regulation was held to be a relevant factor for the purpose of determining market value.

There are five approaches to valuation potentially applicable to utility property: original cost less depreciation; reproduction cost less depreciation; comparable sales; capitalized earnings; and the cost of alternate facilities capable of delivering equivalent energy. New England Power Co. v. Littleton, 114 N.H. at 598, 326 A.2d at 701. All the approaches are valid, but all also have weaknesses. For example, even though net book value (original cost less depreciation) provides the "rate base" upon which plaintiff's rate of return is calculated, "the value of the plant for tax purposes and the value for rate-

making purposes need not be the same." Public Service Co. v. New Hampton, 101 N.H. at 149, 136 A.2d at 597; Barnet v. New England Power Co., 130 Vt. at 412, 296 A.2d at 231; Kittery Electric Light Co. v. Assessors, 219 A.2d at 735. The valuation of alternative sources of equivalent energy capacity is suspect since it critically depends on the validity of certain initial assumptions. New England Power Co. v. Littleton, 114 N.H. at 601-03, 326 A.2d at 702-03. Reproduction costs may be more or less relevant depending on the extent to which it would make sense to presently reproduce the existing facility. Id. at 600, 326 A.2d at 702; Concord Gas Co. v. Concord, 114 N.H. at 56, 314 A.2d at 681. Given all the imponderables in the

valuation process, "[j]udgment is the touchstone." New England Power Co. v. Littleton, 114 N.H. at 599, 326 A.2d at 701; Public Service Co. v. New Hampton, 101 N.H. at 154, 136 A.2d at 600.

Public Service Co. v. Ashland, 117 N.H. 635, 638-9 (1977).

The taxpayer has the burden of proof and it is the taxpayer's responsibility to satisfy the board as to the disproportionality of the tax burden imposed by the selectmen. "The burden was on the company to satisfy [the trier of fact] by a preponderance of the evidence that it was paying more than its proportionate share of the taxes . . . and thus entitled to an abatement." New England Power Co. v. Littleton, 114 N.H. at 599, 326 A.2d at 701.

Public Service Co. v. Ashland, supra at 640.

. . . [A] utility which, after presenting evidence on all of the relevant methods of valuation, can establish the presence of regulation so restrictive as to limit any prospective purchaser of its property to a return based on the net book value of the property, should be deemed to have proven that the property's market value is equal to its net book value, in the absence of any specific evidence of higher market value. . . . Such a demonstration would create a presumption that market value is equivalent to net book value. The presumption may then be rebutted by the towns' coming forward with evidence of other factors that would influence a prospective purchaser: high current reproduction cost, potential for expansion, the remaining useful life of the property, etc. See Public Service Company v. Town of Ashland, 117 N.H. at 638, 377 A.2d at 125, and cases cited therein.

Appeal of Public Service Co. of N.H., 124 N.H. 479, 486, 485-86 (1984).

The Board finds as follows.

The regulation the Taxpayer is subject to is not so restrictive as to limit any prospective purchaser of its property to a return based on net book value.

The original-cost-less-depreciation or net-book-cost approach is an historical bookkeeping methodology which ignores current market-place influences. The net-book-cost method is designed as an arithmetic method for the sole purpose of recovering investments made and measured on an original dollar basis. Use of original cost less depreciation for public utilities and reproduction cost new

less depreciation for other taxpayers for identical property would result in public utilities paying a smaller and smaller share of the tax burden each year.

No comparable sales were presented.

The capitalized-earnings approach ignores other elements of value such as the franchise value of the public utility property. The Board finds the capitalized-earnings approach is contributing but not limiting evidence for determination of the value of public-utility property.

Neither party presented any evidence using the alternate-facilities method of estimating values of public-utility properties.

The unit method is not property specific enough to enable the Board to make a determination of the value of public-utility property in a specific taxing jurisdiction.

The best evidence of value of the PSNH public-utility property is the reproduction cost. The parties presented the following estimates of reproduction cost new less physical and functional depreciation of PSNH's property exclusive of land:

<u>Tax Year</u>	<u>Town</u>	<u>PSNH</u>
1981	\$14,870,443	\$14,335,000
1982	\$14,891,593	\$14,925,000
1983	\$14,971,369	\$15,179,000

The Board finds that a reasonable estimate of the reproduction cost new less physical and functional depreciation is best determined by averaging the values presented by both parties. Thus the Board finds the reproduction cost new less physical and functional depreciation to be:

1981 tax year \$14,602,721

1982 tax year	\$14,908,296
1983 tax year	\$15,075,184

The Town adopted the 15 percent economic depreciation determined by the Board in PSNH v. Town of Londonderry, Docket Nos. 1230-81 and 2084-82 and use of the equalization ratios stipulated to. The Taxpayer argued for economic depreciations in the 55 to 60 percent range and use of the equalization ratios stipulated to.

The Board rejects the economic depreciations of the Taxpayer because they simply bring the reproduction cost new less depreciation back to original cost less depreciation, a valuation method rejected by the Board.

The value of the subject property is reduced by the regulatory limits on income. However, the value is not limited to capitalized-income value. Property may be purchased for reasons other than income, such as franchise value, to meet a company need for new property, capital appreciation, tax benefits, etc. With commercial property, income may reflect management skills or the lack thereof. With public utilities there is value in the fact that the cost of poor management can be passed on to the consumer.

As in PSNH v. Town of Londonderry, Docket Nos. 1230-81 and 2084-82, the Board concludes 15 percent economic depreciation is the appropriate depreciation to apply.

Therefore, the market value inclusive of land, was

\$12,810,100 on April 1, 1981

\$13,069,850 on April 1, 1982

\$13,211,700 on April 1, 1983

The equalization ratios were as stipulated.

The Board therefore rules the proper assessment was

\$4,355,450 on April 1, 1981

\$7,711,200 on April 1, 1982

\$8,323,350 on April 1, 1983

If the taxes have been paid, the amount paid on the value in excess of \$20,390,000 is to be refunded with interest at six percent per annum from date of payment to date of refund.

The Board rules on the Taxpayer's requests for findings of fact and rulings of law as follows:

Findings of Fact

1. Grant.
2. Grant.
3. Neither grant nor deny.
4. Neither grant nor deny.
5. Neither grant nor deny.
6. Grant.
7. Deny.
8. Deny.
9. Grant.
10. Grant.
11. Grant.
12. Grant.
13. Grant.
14. Grant.
15. Neither grant nor deny.
16. Grant.
17. Grant.
18. Deny.
19. Deny.
20. Grant.
21. Deny.
22. Deny.
23. Deny.
24. Grant.
25. Deny.
26. Grant.
27. Grant.
28. Deny.
29. Deny.
30. Deny.

31. Deny.
32. Deny.
33. Deny.
34. Grant.
35. Grant.

Rulings of Law

1. Grant.
2. Grant.
3. Grant.
4. Deny.
5. Grant.

The Board rules on the Town's requests for findings of fact and law as follows:

1. Granted.
2. Granted.
3. Granted.
4. Granted.
5. Granted.
6. Granted.
7. Granted.
8. Granted.
9. Granted.
10. Granted.
11. Granted.
12. Granted.
13. Granted.
14. Granted.
15. Granted.
16. Granted.
17. Granted.
18. Granted.
19. Granted.
20. Granted.
21. Granted.
22. Granted.
23. Granted.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Anne S. Richmond, Chairman

George Twigg, III

Peter J. Donahue

Paul B. Franklin

I certify that copies of the within Decision have been mailed this date, postage prepaid, to Margaret H. Nelson, Counsel for the Taxpayer, and to Richard F. Upton, Esq., Counsel for the Town.

Michele E. LeBrun, Clerk

