

Public Service Company of New Hampshire

v.

Town of Bow

Docket No. 1980-82

DECISION

This case is an appeal by Public Service Company of New Hampshire (PSNH) of its 1982 assessment of \$78,145,700 (land, \$571,300; improvements, \$77,574,400) placed upon its real estate and equipment in Bow pursuant to RSA 72:8.

The hearing was held over three days, December 4, 5, and 17, 1990, and a view of the property was taken by the Board on March 13, 1991.

PSNH was represented by Margaret H. Nelson, Esq., and Eaton W. Tarbell, Jr., Esq., of Sulloway, Hollis & Soden. Bow (the Town) was represented by Richard F. Upton, Esq., and Barton L. Mayer, Esq., of Upton, Sanders & Smith.

The property can be summarized as follows:

Merrimack Station: a coal-fired, electric generating station of 459 MW;

Garvins Falls Hydro: a hydro-electric generating station with an installed capacity of 12.1 MW;

2 Combustion Turbines of 37 MW located at Merrimack Station;

Transmission and distribution equipment: four substations, eleven distinct transmission lines and a distribution system for approximately 650 customers in Bow; and

Land and land interest: 546.9 acres fee owned land; 533.2 acres  
easement interests.

The Parties agreed to five stipulations:

- 1) all filing requirements had been met by PSNH;
- 2) December 31 may be used as a proxy for the following April 1 with respect to all matters drawn from the company's books and records;
- 3) the 1982 equalization ratio for Bow of 53 percent, as established by the State of New Hampshire Department of Revenue Administration, is proper and shall be utilized by the Board in arriving at an assessed value;
- 4) the highest and best use of all taxable property other than land is as a regulated, public utility. PSNH, however, does not waive its claim that the highest and best use of the land interest in Bow is as a regulated public utility; and
- 5) the only issue for the Board to determine is the fair market value of the subject property as of April 1, 1982.

As a preface, the Board notes that this case took eight years to come to trial and three days to hear. The technical and legal issues are complex and many. Yet, unfortunately, the passage of time has only exacerbated the complexity of the issues rather than refining and clarifying them. Despite various appeals by utilities to the New Hampshire Supreme Court, the parties' basic arguments vary little from their predecessors over the past 30 years. As the statutes governing the appraisal of utilities and real estate have remained essentially unchanged, the ground remains fertile for disagreement on the market value of utility property.

It has been said that "(t)he search for 'fair market value' is a snipe hunt carried on at midnight on a moonless landscape."

Fusegni v. Portsmouth Housing Auth., 114 N.H. 207, 211 (1974) (quoting Bigham, "Fair Market Value", "Just Compensation", and the Constitution: A Critical View, 24 Vand. L. Rev. 63, 90 (1970)).

Nonetheless, the Board, with its specialty on valuing properties, has the ability to make a decision on value, using its collective expertise and the parties' evidence.

The Board is very aware of the import of any resolution of this appeal.

In his trial brief, Mr. Upton places a spin on this import.

Since 1982, PSNH has not taken any appeals to the Board from Bow. In fact no appeals of any kind were taken for four years and then only a series of appeals to the Superior Court, still pending. This is not important perhaps, except to show why both sides regard this case as likely to exert an influence on the upcoming Superior Court cases, making the contest more keen at this time.

Given that taxpayers and/or ratepayers ultimately bear the cost of the litigation and resolution of this type of appeal and given the perennial nature of the disagreement, the Board can only wonder if renewed legislative debate and action to clarify how market value of utilities is to be determined would not be worthwhile to all citizens of the State.

So much said, the Board will render a decision of the market value of PSNH's Bow property as of 1982 that, within its best judgment, best coincides with the requirements of the constitution and the law.

#### ISSUES

At the risk of overlooking or minimizing the myriad of arguments presented in testimony and evidence, the Board will attempt to distill the arguments into the following summary. (A tabular summary of both parties' cost approach to value and their final conclusion of value follows on page 7.



PSNH Arguments

1) The Board should give more weight to PSNH's "well-researched and documented appraisal by an acknowledged expert in the valuation of public utility property \*\*\*" (Brief of PSNH pg. 2) than to Bow's witnesses who were not experts in utility valuation and who received much of their "hearsay data . . . in 'off the cuff' telephone conferences" (Brief of PSNH, pg. 2).

2) Meaningful consideration should be given to more than one approach to value as PSNH's appraiser, Mr. Moody, has done.

3) In determining the reproduction cost new of any facility, it is appropriate and customary that the original cost of that facility be trended to the appraisal date. PSNH contends Bow's trending the 1990 cost estimates to 1982 cost estimates overstates the property's 1982 value because this trending method could result in the inclusion of the cost of 1990 technologies and conditions when such technologies and conditions did not exist in 1982. Specifically, PSNH argues Mr. Moody's trended, reproduction cost of \$540 per kilowatt was corroborated by his determination of the average cost of \$536 for all coal plants without scrubbers between 400 - 600 MW built in the United States between 1978 and 1981.

4) There exists substantial economic depreciation to the property because of the pervasive regulation by the New Hampshire Public Utilities Commission (PUC) and the Federal Energy Regulatory Commission (FERC). This economic depreciation reduces the value (i) from reproduction cost new less physical and functional depreciation (RCNLD) as measured by the shortfall of earnings allowed on net book (ii) compared to a favorable rate of return that should be allowed on RCNLD.

5) "[The] highest and best use of all of the land (improved and unimproved) was continuation of its present use as part of an integrated public utility system." (PSNH Brief, pg. 21) Most weight was given to the net book cost and income approaches as they best reflect the impact of regulation on the land.

Town's Arguments

1) The Board should give the most weight to the replacement-cost-new-less-depreciation approach, questionable weight to alternative-plant-evaluation approach and no weight to the net-book, capitalized-earnings, comparable-sales approaches (except in valuing the land) or the DRA unit method.

2) The original costs of the Merrimack station were substantially lower than the generally prevailing costs of constructing a similar utility plant at that time. This was due to excellent management of the original construction, including the common plant, avoidance of substantial delays (thus lessening the cost of equity or borrowed money), and the economy of scale in building Unit #2 afforded by the contracted sale of 100 MW to Vermont Utilities (Velco contract).

3) Any economic depreciation due to regulation should be moderated or eliminated by the economic enhancement of "in situ value" and the remaining useful life, the high alternative reproduction cost, and the potential for expansion.

4) The highest and best use of the improved land was for the continuing support of the generation and transmission facilities while the highest and best use of the unimproved yet buildable land was for industrial development.

PSNH's reliance on the net book and income approach to valuing land defies logic.

(The Board notes it was never able to discern whether the Town's argument is that PSNH is grossly underassessed (compare the 1982 actual assessment of \$78,145,700 to the valuation argued at trial of \$107,955,564), or that the original assessment is proper by default.)



PSNH V. Bow Summary of Values  
Reproduction Cost New Less Depreciation

<u>Facility</u>	<u>PSNH RCN</u>	<u>PSNH RCNLD</u>	<u>PSNH RCNLD w/ED</u>	<u>TN RCN</u>	<u>TN RCNLD</u>
Merrimack: Station	248,026,221	112,414,422	31,911,682	387,577,579	176,656,545
(Non-Tax)	(13,944,173)	(6,274,878)	(3,991,945)	-	-
Sub Total	<u>234,082,048</u>	<u>106,139,544</u>	<u>27,919,737</u>	<u>387,577,579</u>	<u>176,656,545</u>
Comb. Turb.	7,578,448	2,425,103	1,417,929	22,244,400	9,787,860
Garvin	20,801,163	8,779,618	8,904,531	12,903,637	9,319,054
Non Prod.	14,267,440	11,079,900	3,220,377	13,122,720	5,868,125
Dist. Plant	(in Non Prod.)	(in Non Prod.)	(in Non Prod.)	-	65,066
Gen. Plant	"	"	"	-	47,257
Trans. Uncl.	-	-	-	-	132,062
CWIP	-	-	-	-	193,775
<b>Total</b>					
<b>Improvements</b>	<u>276,729,099</u>	<u>128,424,165 (-54%)</u>	<u>41,462,574 (-85%)</u>	<u>435,848,336</u>	<u>202,069,744 (-54%)</u>
		Correlated to	42,000,000		
<b>Land</b>			300,000		1,620,000
<b><u>TOTAL MARKET VALUE</u></b>			<u>42,300,000</u>		<u>203,689,744</u>
<b>1982 Bow equalization ratio:</b>			x.53		x.53
<b>Proper Assessment as argued by Parties:</b>			<u>22,419,000</u>		<u>107,955,564</u>

Board's Findings and Rulings:

The Board's findings below are organized into two sections:

- 1) general considerations; and
- 2) values on the properties.

I. General Findings

PSNH has raised the concern that some of the evidence and testimony received by the Board was not of the quality and nature hoped for in a case of this magnitude. RSA 71-B:7 allows the Board not to be bound by the strict rules of evidence as adhered to in the superior courts. See Dartmouth Corp. of Alpha Delta v. Town of Hanover 115 N.H. 26 (1975). This flexibility has allowed the Board to obtain the best information possible on which then to base its decisions. The presenter of any poorly documented evidence runs as much a risk of tainting any valid evidence as the opposing party may have in the difficulty of responding to it. In balance, however, the Board is confident of its ability to sift through evidence and give weight to those elements most deserving it. In the case at bar, while both some of the Town's appraiser's basic assumptions were poorly documented and PSNH's appraisal contained errors needing correction, the counsels' arguments were meritorious, and all evidence will be given the appropriate weight.

"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 alternative facilities capable of delivering equivalent energy." Public Service Co. v. Town of Ashland 117 N.H. 635 at 638 (1977) (emphasis added). Except in valuing the land, the Board finds the comparable sales approach is

not helpful in this case as both parties agreed that there have been no transfers of electric generating property.

Further, the original-cost-less-depreciation (net-book cost) and capitalized-earning approaches do not provide as reasonable an indication of market value in this case as does the replacement-cost-less-depreciation approach (which is analogous to the cost of alternative-facilities approach).

A number of reasons collectively support this conclusion; no one alone tips the scale.

a) For net-book cost to be a valid basis for assessing public utility taxes, it must be shown that the governmental regulation is so controlling as to allow no other value.

Such a result [finding that net book was an appropriate measure of market value] would be compelled only if regulation were so extensive as to make it impossible for any utility property to be sold at a price in excess of net book value. In the past at least, this has been held not to be the case in this State. Appeal of Public Service Co. of New Hampshire, 124 N.H. 479, 485 (1984).

PSNH did not prove there were no possible situations in which the sale of the utility property at a value higher than net book would be allowed to take place by the PUC for the public good.

To better understand how market value can conceivably be higher than net book, PSNH could be considered a hypothetical buyer in which its CEO would have choices of obtaining substitution power by purchasing existing power, replacing or acquiring the plant in question or building an alternative plant.

Under our construction of the taxing statutes, "[taxable] value is 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." Company v. Gilford, 67 N.H. 514, 517, 35 A. 945, 946-47 (1894) (quoted in Public Service Co. v. New Hampton, 101 N.H. 142, 146, 136 A.2d 591, 595 (1957)).

In New Hampton, we recognized the difficulty of determining the market value of property owned by a public utility, especially when the utility has a legal monopoly on the business for which the property can most profitably be used. Id. We noted, however, that in such cases a court could view the owner as a hypothetical buyer, id. at 146-47, 136 A.2d at 595, whose idea of a fair purchase price would depend largely on "the price [it] would have to pay for building a new equivalent plant." Id. at 147-48, 136 A.2d at 596. Public Service Company et als v. Town of Seabrook, 126 N.H. 740, 742 (1985).

There was testimony that in 1981 the Merrimack Station was producing power at 2.6 cents per kilowatt hour and that the average cost of purchased power by PSNH was 4.47 cents per kilowatt hour. Further, this purchased power price was "based on original cost less depreciation of the owners of the equipment that sold the power." (Transcript, Day II, pg. 96-97.) While this purchased power cost is a direct pass through for PSNH to its customers, it in itself indicates that other companies had been allowed by regulators to wholesale electricity (presumably based in part on higher or more recent construction costs) at a substantially higher rate than PSNH was producing it at Merrimack Station. The opportunity costs of purchased power versus the generated power of Merrimack Station cannot be ignored.

The hypothetical CEO could also look to alternative facilities as a source of power. The Board believes the large-scale alternatives of new hydroelectric or nuclear plants that existed in 1982 were less desirable than the Merrimack plant given the political and environmental climate and the costly protracted construction schedules of those types of facilities. Thus,

it is very conceivable that a purchaser faced with the alternatives outlined above would be willing to pay, and regulators willing to approve, a price for Merrimack Station above its net-book value.

b) PSNH purchases and sells real estate and equipment in the open market when it needs a new plant or when it disposes of surplus property. Testimony indicated such examples as the sale of the Daniel Street Station in Portsmouth, the sale of mercury from the Schiller Plant, and the purchase of land for transmission lines from Tamposi and Nash in Amherst. While these properties were acquired and sold at open-market rates, PSNH would have us believe its other assets are worth substantially less, as indicated by net book or economic depreciation on reproduction costs. Again, with the generating property at bar, this might be a valid argument if PSNH could prove that regulations are controlling of value, but it has not.

To allow an abatement in the magnitude requested by PSNH without compelling proof of overwhelming regulation would be analogous to assessing the property as if in current use. This request must fail because there is no constitutional or statutory base to support it.

c) Both parties used very similar physical and functional depreciations for the Merrimack plant. The plant was being routinely maintained. The existence of some outdated technologies (namely a pressurized boiler versus a balanced draft system and the presence of asbestos insulation), while significant and measurable, did not render the plant obsolete. It is logical then that the Merrimack plant, if built in 1982, would not be reproduced as originally built but would be replaced with a plant similar to the existing one but with technological improvements. Thus

replacement cost, at least for the Merrimack Station facility, is more accurate than reproduction costs.

The Board finds that for all other PSNH improvements in Bow there existed no reasons for abnormally low original costs or significant technological changes. Consequently, reproduction costs of these other improvements form a reasonable basis for determining their final market value.

"Reproduction costs may be more or less relevant depending on the extent to which it would make sense to presently reproduce the existing facility."

New England Power Co. v. Littleton, 114 N.H. 594, 600 (1974).

d) The New Hampshire constitution requires that taxes be "reasonable and proportional." While not specifically testified to, the Board is aware that Bow, as do most rural and residential communities, assesses all other property using a combination of the cost and comparative-sales approaches to value. While these should not be relied on to the exclusion of the income approach, they do provide a starting point for equitable assessments after appropriate adjustments and depreciations. Net-book cost, however, is significantly different because it starts with original costs of various years and price levels. While net book cost may be an appropriate consideration for rate setting, it is not comparable with current replacement costs and transactions that are the basis for assessing other taxpayers in Bow.

Short of proving that regulations are controlling of value (which PSNH has not), using both net-book and replacement costs as the bases for assessing different properties within the same town would lead to disproportionate taxation.

In connection with the plaintiff's insistence that net book cost and the value for tax purposes must be the same, it seems that, among other considerations, changing price levels would render such a method impractical and unfair. Public Service Co. v. New Hampton, 101 N.H. 142, 151 (1957).

e) The capitalized-earnings approach, in this case, estimates the value by determining the net operating income (NOI) of PSNH's entire plant, capitalizing the NOI, and then allocating a portion of the NOI to the Bow property based on the Bow property's pro-rata share of PSNH's aggregate net-book value for all its properties in the State. The Board rejects this approach in this case because it tends to average the income potential of all of PSNH's property in the State and thus fails to recognize the differential values that exist for various components of the integrated systems. Location of a component (here, the Bow property) relative to market or a neighboring utility and a component's relative importance to the rest of the integrated system are but two arguments for not averaging values.

## II. Findings of Value Improvement

Having established that both replacement and reproduction costs are appropriate methods for different components of PSNH's improvements, the issue then is what are the correct starting figures. As the summary of values on Page 7 shows, the parties disagree substantially as to the reproduction costs for especially Merrimack Station and the combustion turbines.

### Merrimack Station

The Board finds shortcomings and merit to portions of both parties' arguments. On one hand the Town's reliance on 1990 poorly documented replacement costs was given little weight by the Board. It was clear from the testimony and evidence that technologies and regulatory requirements had

changed significantly from 1982 to 1990. It was unclear whether all technological differences had been discounted in the "over the phone" estimates and whether the trending to 1982 removed the differences if indeed they had been included in the 1990 estimate. On the other hand, the Town presented credible evidence that the original costs for Merrimack Station were abnormally low compared to their contributory market value. (See #2 of the Town's arguments, page 5 this decision.)

Both parties then proceeded to look at the cost per kilowatt to construct other coal-burning plants as a method to support their reproduction cost estimates. PSNH averaged the trended costs of 18 plants built in 1978-1981 without scrubbers to arrive at a supporting figure of \$536 per kilowatt. The Town averaged the trended costs of 68 coal plants built from 1962-1982 and arrived at a supporting figure of \$833 per kilowatt.

The nearly \$300-per-kilowatt difference can be largely explained by both expert witnesses, Mr. Moody (PSNH) and Mr. Sansoucy (Town), erroneously averaging rather than correlating the results of their analyses.

In every appraisal, a vast amount of data must be sifted, analyzed, and related to the subject property before a final estimate of value can be made. The purpose of correlation is to boil down this information and to choose the basic and fundamental facts that give the greatest support to an estimate arrived at by a particular approach . . . . Value can never be calculated by adding up the several estimates . . . and taking an average of these estimates. Averages do not lead to a sound conclusion as to value . . . .

The use of accepted appraisal methods and techniques does not in itself produce a sound value estimate. It must be combined with good judgment on the part of the appraiser, as well as experience in gathering needed information and making thorough analyses and valid interpretations of relevant data. Encyclopedia of Real Estate Appraising, Revised and Enlarged, Edith J. Friedman, Editor, at 121 and 126 (1968).

Both witnesses agreed construction costs were starting to escalate at a faster rate in 1981-1982 than previous years. Therefore, applying good judgment becomes all the more critical. "Given all the imponderables in the valuation process, '[j]udgment is the touchstone.'" Public Serv. Co. v. Town of Ashland, 117 N.H. 635, 639 (1977).

Logic also dictates that any CEO, in weighing the alternative costs of a replacement facility, would not average the costs of other plants but would weigh more heavily those plants with the most similar characteristics, including date of construction, geographical location and proximity to fuel sources, size, etc.

In reviewing and correlating all the evidence before it, the Board finds a reasonable replacement-cost estimate for Merrimack Station on April 1, 1982, would be \$650 per kilowatt, or \$298,350,000. In arriving at this replacement-cost estimate, the Board is mindful it represents an average of the older but better built Unit 1 and the newer but less expensively built Unit 2 at Merrimack Station.

While PSNH's physical and functional depreciation includes some consideration of changes in technology, which the above replacement-cost figure already accounts for, the Board finds both parties' appraisers' estimate of approximately minus 55 percent for physical and functional depreciation is still reasonable. Thus the replacement cost new less physical and functional depreciation is \$134,257,500. Further, as it is likely this replacement-cost figure would also include nontaxable property similar to the existing plant, and since the only estimate of nontaxable components was as presented by PSNH, the Board finds the depreciated amount of \$6,274,878 for

nontaxable items is reasonable and should be subtracted from \$134,257,500 to arrive at the taxable replacement cost new less physical and functional depreciation of \$127,982,622.

#### Combustion Turbines

PSNH presented evidence that the trended reproduction costs of the turbines in 1982 was \$7,578,448. The Town, however, estimated the 1982 reproduction costs of the turbines to be \$30,060,000. However, the Board finds the Town did not present any conclusive reasons why the turbines actually cost PSNH four times less than the Town's estimated cost. Lacking good reason as to why the original costs might have been abnormally low (as was shown for the Merrimack Station facility), the Board is reluctant to give more weight to the Town's replacement-cost estimates received via a telephone conversation than to the properly trended RCNLD estimates presented by PSNH. Therefore, the Board finds the RCNLD is reasonably estimated at \$2,425,103.

Non-Production Structures (Substations, transmission lines, distribution plant and general plant)

The Board finds PSNH's itemized summary in Exhibit 4 of Mr. Moody's appraisal (Exhibit TP-a) to be the best evidence of the reproduction costs and physical and functional depreciation of these items. While not specifically included in the itemization, the Board finds these figures include unclassified transmission work and construction work in progress. It has been the experience before this Board for PSNH's appraisers to assign these items to their appropriate account given the historical perspective of their appraisal. Lacking any direct testimony or evidence to the contrary, the Board is entitled to rely on its experience. See RSA 541-A:18 V.

Therefore, a reasonable estimate of RCNLD for these items is \$11,079,900.

#### Garvin Falls Hydroelectric

Despite differing reproduction costs and depreciations, the final value for Garvin Falls arrived at by both parties differs by less than 5 percent (PSNH: \$8,904,531; Town: \$9,319,054). Interestingly, PSNH found an "economic enhancement" to RCNLD for Garvin Falls by comparing it to the cost of an alternate facility. However, even with the "economic enhancement" the value of \$8,904,351 is slightly less than PSNH's net-book value for Garvin

Falls of \$9,214,871. The Board must echo the question raised by the Town in brief of why does PSNH ignore the evidence of a higher net book. Would owners of PSNH approve a sale of Garvin Falls at less than net-book cost? The Board does not believe so because such a sale would defy logic and the very arguments made by PSNH for over 30 years. Therefore, the Board finds a reasonable estimate of the market value of Garvin Falls is \$9,250,000.

#### III. Effect of Regulation on Improvement Values

The Board finds the effect of regulation (identified as economic depreciation in this case) must be considered and values adjusted appropriately. See Royal Gardens Apartments v. Concord, 114 N.H. 668 (1974). However, PSNH's assertion that of the extensive and pervasive regulation results in large economic depreciation falls short and would lead to illogical results. For example, PSNH claims the taxable portion of Merrimack Station, after economic depreciation in excess of \$80,000,000, has a market value of \$27,919,737, or \$61 per kilowatt, while Garvin Falls hydroelectric has a depreciated market value of \$8,904,531, or \$736 per kilowatt. To be sure,

these are two different types of generating facilities. Hydroelectric plants (such as Garvin Falls) need minimal maintenance compared to a coal-burning plant (such as the Merrimack Station); a "run of the river" hydroelectric plant, additionally, is not demand responsive in its generating capacity as a coal-burning plant is. On balance, however, it makes no sense to value Merrimack Station, which made up 45 percent to 50 percent of PSNH's entire generating capacity and had 38 times the rated capacity of Garvin Falls, at only 3.1 times the value of Garvin Falls. Further, it is inconceivable to think that PSNH would be willing to sell Merrimack Station at \$61 per kilowatt the cost of purchasing alternative power or alternative generating facilities as discussed earlier in this decision.

The Board finds any economic depreciation must be moderated by the facts that Merrimack Station constitutes about one half of PSNH's entire generating capacity and thus is an integral part of the entire system, has a "high current reproduction cost," has "potential for expansion," and has substantial "remaining useful life." See Appeal of Public Service Company, 124 N.H. 479 (1984); see also Winnipeseogee Lake Cotton and Woolen Mfg. Co. v. Gilford, 64 N.H. 337 (1887).

Such considerations, in the Board's judgment however, do not entirely negate economic depreciation due to regulation as the Town argues. Any purchaser, including PSNH as a hypothetical purchaser, would recognize PUC's or FERC's unwillingness to approve a transfer at the property's full RCNLD. While the effect of regulation is difficult to measure, the Board finds a reduction in the RCNLD for Merrimack Station, the combustion turbines, and the nonproducing property by 10 percent for economic depreciation due to

governmental regulations is reasonable. Again, "Given all the imponderables in the valuation process, '[j]udgment is the touchstone.'" Public Serv. Co. v. Town of Ashland, 117 N.H. 635, 639.

#### IV. Summary of Improvements of value

In summary, after making all appropriate adjustments, the Board rules that a reasonable estimate of the 1982 full value of PSNH's improvements in Bow is as follows:

Merrimack Station	115,184,360
Combustion Turbines	2,182,293
Garvin Falls	\$ 9,250,000
Non-Production Facilities	9,971,910
Total	\$136,588,563

Applying Bow's 1982 equalization ratio of 53 percent indicates an assessment for the improvements of \$72,391,938.

#### V. Land Value

The Town had assessed the land and land interests owned by PSNH in Bow at \$571,300, which equalized indicates a market value of \$1,077,925. The Board finds the record is replete with evidence that the improved site has many attributes such as river frontage (useful for cooling and other industrial uses), rail access and relative central proximity to PSNH's market to enhance the land's contributory value to the entire property. Further, there exists significant buildable but unimproved land that is not critically integral at the present time to the operation of the generating facilities.

Notwithstanding the above-stated attributes, the Board finds the Town's comparable sales are so dissimilar and require such substantial adjustments so as to cast a serious doubt on the validity of the Town's final estimate of

\$1,620,000 for the land and land interests.

The Board also rejects PSNH's position that the net-book and income approaches should be used in valuing PSNH land. The reasons mentioned above for rejecting these approaches in valuing the improvements equally applies here. Again, PSNH has not proved that the effect of regulation is exclusive to other effects of value. Further, as mentioned earlier, there is evidence that PSNH has acquired and transferred surplus land at full market rates.

PSNH also attempts to cast doubt on the Town's valuation by asserting there may be double taxation on the transmission line easements due to (1) these easements being taxed as intangible property in the form of franchise taxes (RSA 83-b), or (2) owners of land over which these easements pass not receiving a reduction on their assessment for these easements. The Board rules these arguments have no merit as (1) municipalities can properly assess the interest in tangible property (i.e., the right to construct and maintain transmission facilities across land whose fee is owned by others) (RSA 75:2), and (2) that if indeed the owners of the fee interest had received no adjustment in their assessment for the easement (this was not conclusively shown to be the case), the proper remedy would be for those owners to file for an abatement, not for PSNH to be relieved of its proper tax burden.

The Board finds a reproduction-cost approach on land as attempted by PSNH is not a normally accepted method and is highly suspect in this case as it depends on only the original purchases by PSNH (and not perhaps on the general prevailing market at that time) and on questionable long-range trending factors.

On balance the Board, having weighed the Town's market approach tempered

by the reservations mentioned above and tempered in part by the improved land

being part of a regulated public utility, rules the original assessed value of \$571,300 is a reasonable estimate of PSNH's land and land interests.

#### VI. CONCLUSION

In summary, the Board finds the proper 1982 assessment to be \$72,963,238 (land, \$571,300; improvements, \$72,391,938).

If the taxes have been paid, the amount paid on the value in excess of \$72,963,238 is to be refunded with interest at six percent per annum from date paid to refund date.

#### VII. Rulings on Requests

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

1. Granted.	21. Granted. On pgs 3 & 4 of Main Line the Town's appraiser considered but rejected the other approaches to value
2. Granted.	
3. Granted.	
4. Granted.	
5. Granted.	22. Granted
6. Granted.	23. Granted.
7. Denied. The Board finds that the stipulations agreed to by the parties did not specifically address the PSNH property as "investment property."	24. Granted.
Bow	25. Granted.
	26. Granted.
	27. Granted.
	28. Granted.
	29. Granted.
	30. Denied, largely but not exclusively.
8. Granted.	31. Granted.
9. Granted.	32. Denied.
10. Granted.	33. Denied.
11. Granted.	34. Denied.
12. Granted.	35. Granted.
13. Granted.	36. Granted.
14. Granted.	37. Granted.
15. Granted.	38. Granted.
16. Granted.	39. Granted.
17. Granted.	40. Granted.
18. Granted, but not to the exclusion of many other facts or considerations.	41. Denied. See 4th stipulation (Tr. Day 1, p. 14)
19. Granted.	
20. Granted.	



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| 42. Denied. See 4th Stipulation<br>(Tr. Day 1, p. 14).           | 58. Granted with correction of cost<br>approach at \$41,462,574.   |
| 43. Granted.   | 59. Granted.   |
| 44. Granted.   | 60. Denied.  |
| 45. Granted.   | 61. Granted.   |
| 46. Neither granted nor denied.                                  | 62. Denied.  |
| 47. Neither granted nor denied.                                  | 63. Granted.   |
| 48. Denied.  | 64. Granted.   |
| 49. Granted.   | 65. Granted.   |
| 50. Granted.   | 66. Granted. However, MacArthur<br>did consider this issue in<br>determining highest and<br>best use. (See tr. Day II,<br>pg. 162 - 166) |
| 51. Denied.  | 67. Granted.   |
| 52. Denied. Net Book cost was more<br>than econ. enhanced RCLND. | 68. Denied. They were subject to<br>adequate adjustment.   |
| 53. Granted.   | 69. Denied.  |
| 54. Denied.  | 70. Granted.   |
| 55. Granted.   | 71. Denied.  |
| 56. Granted.   |  |
| 57. Denied.  |  |

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

- |              |  |
|--------------|--|
| 1. Granted.  | 13. Granted.   |
| 2. Granted.  | 14. Granted.   |
| 3. Granted.  | 15. Granted.   |
| 4. Granted.  | 16. Granted.   |
| 5. Granted.  | 17. Granted first sentence. Denied<br>second sentence. |
| 6. Granted.  | 18. Granted.   |
| 7. Granted.  | 19. Granted.   |
| 8. Granted.  | 20. Granted.   |
| 9. Granted.  | 21. Granted.   |
| 10. Granted. | 22. Denied.  |
| 11. Granted. | 23. Granted.   |
| 12. Granted. |  |

SO ORDERED.

April 11, 1991

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Peter J. Donahue

Paul B. Franklin

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

Michele E. LeBrun, Clerk

April 11, 1991

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