

Portland Pipe Line Corporation

v.

Town of Gorham

Docket Nos.: 24198-08PT/25123-09PT/25539-10PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the following “Town” assessments on the “Property”: \$4,541,600 in tax year 2008; and \$5,941,700 in tax years 2009 and 2010. The Property consists primarily of underground oil pipelines and easements and is designated as Map R4/30 on the Town’s assessment-record cards. For the reasons stated below, the appeals for abatement on the Property are granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessments were disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; Tax 201.27(f); Tax 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show the Property’s assessments were higher than the general level of assessment in the municipality. Id. The board finds the Taxpayer carried this burden for each tax year.

The Taxpayer argued the assessments were excessive because:

(1) appraisals for each tax year prepared by John H. Davis, III (“Davis”) of JHD3, Inc., using both the income and cost approaches, arrived at separate market value estimates (\$2,324,000 in

2008, \$2,545,000 in 2009 and \$2,503,000 in 2010 -- see the “Davis Appraisals,” Taxpayer Exhibit Nos. 13 - 15) which are much lower than the market values reflected in the Town’s assessments;

(2) the Davis Appraisals are the best evidence of market value in each tax year and are further corroborated by the appraisals prepared for purposes of the Utility Property Tax (RSA ch. 83-F) by the department of revenue administration (“DRA”) which estimate even lower market values (\$1,600,028 in tax year 2008, \$1,346,402 in tax year 2009 and \$1,286,545 in tax year 2010; see the “DRA Appraisals,” Taxpayer Exhibit Nos. 10 -12)¹;

(3) the Town consistently assesses a higher value on the Taxpayer’s pipeline property and its easements than other municipalities where the Taxpayer owns similar property and has increased assessments for these tax years even though pipeline flow volumes (and revenues) have decreased over time;

(4) the Town’s assessments are based entirely on the appraisal report and value conclusions of George E. Sansoucy, P.E., LLC (“Sansoucy”) which are not credible and overestimate the market value of the Property in each tax year, in part because Sansoucy only uses the cost approach and his estimates vary significantly (by as much as 46%) from year to year;

(5) Sansoucy changed his market value estimates dramatically over time (for 2008, from \$4,541,600 to \$5,058,300 to \$7,371,000 and then to \$6,591,000; for 2009, from \$5,941,700 to \$6,653,000 and then to \$6,847,000; and for 2010, from \$5,941,700 to \$5,751,000 and then to \$6,006,000); further undermining the credibility of these estimates; and

(6) the assessments should be abated based on the market value estimates in the Davis Appraisals of \$2,324,000 in tax year 2008, \$2,545,000 in tax year 2009 and \$2,503,000 for tax year 2010,

¹ At the hearing, the Town renewed its objection to the introduction of the DRA Appraisals by the Taxpayer, but the board overruled the Town’s objection, consistent with its prior rulings. (See the March 22, 2012, August 24, 2012, October 1, 2012 and November 29, 2012 Orders.)

adjusted by the Town's level of assessment in each tax year (using the weighted mean ratio for 2008 and 2009 and the median ratio for 2010).

The Town argued the assessments were proper because:

- (1) the Town performed a revaluation in 2007 and then again in 2008² to update market values;
- (2) Sansoucy first prepared the "Sansoucy Appraisal" in connection with the 2008 revaluation (Municipality Exhibit K), later prepared a combined appraisal report for tax years 2008, 2009 and 2010 in Municipality Exhibit I (with the "Errata – 11/14/2012" pages, Municipality Exhibit J) using updated cost information and considered all three approaches before using the cost approach;
- (3) as discussed in the Town's Trial Memorandum (p. 6), the "unit method" utilized by Davis has not been accepted as proper methodology for valuing utility property in New Hampshire for ad valorem taxation and therefor Davis' market value opinions should be given no weight;
- (4) unlike Davis, Sansoucy did not use Marshall & Swift cost data but instead used actual pipeline construction cost information for this region (see Municipality Exhibit J, p. 20);
- (5) the estimates of market value presented by Sansoucy changed because of additional cost information obtained over time, are more credible and reliable than the values in the Davis Appraisals and establish the Property was underassessed rather than overassessed in these tax years;

² The consecutive year revaluations occurred for reasons unrelated to the Property.

(6) the level of assessment in the Town is reflected in the median ratio, not the weighted mean ratio; and

(7) the Taxpayer did not carry its burden of proving disproportionality.

Prior to the close of the hearing, the parties requested and were granted permission for additional time to file post-hearing briefs/trial memoranda and proposed “findings” (up to 50 each). The Taxpayer’s Post-Hearing Brief and the Town’s Trial Memorandum, along with proposed findings, were filed with the board on January 31, 2013. On that date, the Taxpayer also filed a “Consolidated Hearing Transcript.” The parties then requested and were granted permission to file “Reply Briefs.” (See February 22, 2013 Order.) These were submitted by the Taxpayer on March 4, 2013 and the Municipality on March 14, 2013. The board has responded to the parties’ proposed findings in Addendum A attached hereto. [In this Decision, the board will cite the relevant numbered findings as follows: “[Party’s] Finding No. ___.”]

The parties agree on what the median ratios and the weighted mean ratios calculated by the DRA were for each tax year (see Stipulation, Taxpayer Exhibit No. 1), but disagree on which ratio reflected the “general level of assessment” in the Town. The board’s rulings on this and other issues are presented below.

Board’s Rulings

Based on the evidence, the board finds the Taxpayer met its burden of proving disproportionality and the assessments on the Property should be abated as follows:

	<u>2008</u>	<u>2009</u>	<u>2010</u>
Market Value Findings	\$3,650,000	\$3,650,000	\$3,650,000
Level of Assessment (Median Ratio)	105.2%	112%	120.1%
Indicated Assessments	\$3,839,800	\$4,088,000	\$4,383,650
Abated Assessments (rounded to nearest \$000)	\$3,840,000	\$4,088,000	\$4,384,000

Consequently, the appeals are granted for the reasons detailed below.

A. The Levels of Assessment for Tax Abatement Purposes

Along with substantial disagreements regarding the market value of the Property in each tax year (discussed in Section B, below), the parties also disagree on whether the median ratio or the weighted mean ratio should be applied to reflect the level of assessment in the Town for tax abatement purposes in tax years 2008 and 2009. [For tax year 2010, the Taxpayer agrees with the Town that the median ratio “may be more appropriate” than the weighted mean ratio. See Taxpayer’s Post-Hearing Brief, p. 30.]

This dispute for two of the three tax years is of some consequence since these calculated ratios varied to a material degree³ and because the assessments at issue are in the millions of dollars, enlarging the effect of even small percentage point differences. As noted below, the board finds merit in the Town’s position that the median ratio (rather than the weighted mean ratio) should be applied as the level of assessment in all three tax years.

The parties acknowledge the DRA calculates both the median ratio and the weighted mean ratio for each municipality for each tax year and each ratio is a recognized measure of central tendency. While both are called “equalization ratios” in varying contexts, there are differences in how they are calculated and each is intended to serve a different purpose. As stated in the DRA’s “Equalization Manual” (available on its website):

“[t]he median is the generally preferred measure of central tendency for assessment equity, monitoring appraisal performance, and determining reappraisal priorities or evaluating the need for a reappraisal” (Section 1.23, emphasis added); and

³ The parties agree the ratios were as follows:

<u>Tax Year</u>	<u>Median Ratio</u>	<u>Weighted Mean Ratio</u>
2008	105.2	100.0
2009	112.0	108.1
2010	120.1	110.2

See Taxpayer Exhibit No. 1; Taxpayer’s Post-Hearing Brief, p. 29; and Town’s Trial Memorandum, p. 29.

“[t]he weighted mean is the generally preferred measure of central tendency for computing the total aggregate value of a jurisdiction for indirect equalization” (Section 1.38).

See also Section 4.1 (“The Equalization Process”) in the ASB’s (Assessing Standards Board’s) “Assessing Reference Manual for Taxpayers, Selectmen, and Assessors” (available on its website).⁴

Consistent with these distinctions, the median ratio is typically applied in property tax appeals to determine whether a property is proportionally assessed within a municipality in relation to other properties (“assessment equity”), while the weighted mean ratio is used for comparing property values between municipalities (the “total aggregate value of a jurisdiction” for tax revenue allocation and other purposes.)

In the vast majority of tax abatement appeals, there is no dispute regarding use of the median ratio to reflect the level of assessment in the municipality. The board finds use of this ratio to be proper, especially where the municipality is consistent in its use for all taxpayers. [See, e.g., Como v. Town of Sharon, BTLA Docket No. 24028-08PT (September 3, 2010), p. 6, and the cases cited therein and in the Town’s Trial Memorandum, pp. 30-31.] The Taxpayer’s contrary arguments that the weighted mean ratio should be used for two of the three years are not persuasive and, to some extent, take statements in the Equalization Manual out of context.⁵

Consequently, the board finds the median ratio reflects the levels of assessment in the Town: 105.2% in tax year 2008, 112% in tax year 2009 and 120.1% in tax year 2010.

⁴ This ASB manual states: “The median ratio is the generally preferred measure of assessment equity, and is an indication of the average level of assessment for individual properties.” (Id.)

⁵ For example, paraphrasing the Equalization Manual to the effect that “[t]he median ratio can only be used under very limited circumstances” (Post-Hearing Brief, p. 30) is not persuasive since this statement, in context, applies to the DRA’s process of reporting one “equalization ratio” for computing the aggregate value of property in each jurisdiction.

B. Market Value Findings

The Property consists of a pipeline approximately 4.95 miles in length located underground in right-of-ways (easements) within the Town. The Property is part of an integrated pipeline system consisting of a total of 165.77 miles that has been in operation for many years.⁶

There is no dispute the Property is subject to taxation at the Town level based on its market value, defined as “the property’s true and full value....” (See, generally, RSA 75:1 (“How Appraised”); and RSA 72:8 (“Electric Plants and Pipe Lines”), which specifically provides that “pipe lines employed in” the “transportation” of “crude petroleum. . . shall be taxed as real estate in the town in which said property or any part of it is situated.”) Pursuant to RSA 83-F, the Property is also subject to a separate “Utility Property Tax” administered and collected at the State level by the DRA, a tax based on the “full and true value” of the Property. (See RSA 83-F:3.) The board finds these market value definitions are equivalent and the parties have not argued otherwise. (Cf. Town Finding Nos. 2, 3 and 7.)

The Taxpayer (in its Post-Hearing Brief, p. 8) aptly cites a prior tax abatement decision involving a regulated utility: Rosebrook Water Co., Inc. v. Town of Carroll, BTLA Docket No. 19382-01PT (March 24, 2004). In Rosebrook (pp. 3-4), the board noted:

[t]here are three generally-recognized approaches to value: 1) the cost approach; 2) the comparables sales approach; and 3) the income approach. Appraisal Institute, The Appraisal of Real Estate 62 (12th Ed. 2001). With respect to public utilities, the supreme court has expanded on these basic appraisal approaches, as noted in Public Serv. Co. v. Town of Ashland, 117 N.H. 635, 638 (1977):

⁶ The Taxpayer actually owns three pipelines, one of which (12 inches in diameter) was previously abandoned and two of which (18 inches and 24 inches in diameter) were used to transport oil through the states of Maine, New Hampshire and Vermont (a total of 27 communities) to the Quebec, Canada border. (See Town’s Trial Memorandum, p. 1; and Taxpayer’s Post-Hearing Brief, p. 2. According to the Taxpayer, the 18 inch diameter pipeline was “idled in 2011,” after the three years that are the subject of these appeals. (Taxpayer Finding No. 2.)

[t]here 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. 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.⁷

The “unit method” is not intrinsically tied to any one of the above five valuation approaches. Cf. Public Service Co. of N.H. v. Bow, 139 N.H. 105, 106 (1994) (taxpayer argued “original cost less depreciation” method was “approximated by the unit method”). In theory, it is compatible with all of them, including the cost approach. The utilization of the unit method is reasonable because:

different elements or components of a tract of land are not to be separately valued and added together. For example, the value of timber, as an independent component, cannot be added to the value of minerals in the same property as an independent component, and this sum further added to the value of the land. Such a procedure results in a *summation or cumulative* appraisal, which is forbidden in appraisals for federal acquisitions, as it is in general real estate appraisal practice. The summation appraisal is an invalid procedure because the entire unit is being hypothetically sold in its entirety, not as separate parts individually.⁸

The unit method, or “unitary method of valuation” is:

a method that values the property within a particular jurisdiction based on the fair share of the value of an operating enterprise of which the property is an integral part.... The unit rule concept is typically associated with the valuation of public utilities, telecommunications networks, railroads, and other transportation properties.⁹

Both the Davis Appraisals and the DRA Appraisals use the unit method of valuation.

⁷ Accord, Appeal of Pennichuck Water Works, 160 N.H. 18, 38 (2010) (“[t]he trier of fact may use any one or a combination of five appraisal techniques in valuing public utility property”); and Tennessee Gas Pipeline Co. v. Town of Hudson, 145 N.H. 598, 600 (2000), quoting Southern N.H. Water Co. v. Town of Hudson, 139 N.H. 139, 141 (1994) (noting “all relevant factors must be considered,” a “trier of fact need not allocate specific weight to one of the approaches listed” and “judgment is the touchstone”). (Cf. Town’s Trial Memorandum, p. 4.) In Tennessee Gas, the supreme court stated “[i]t is extraordinarily difficult to value public utilities”, therefore the “trier of fact” is given “considerable deference in this area” and “we have... never attempted to tie the fact finder’s hands with a rigid fair market value formula in the absence of legislative directive.” 145 N.H. at 600 and 602.

⁸ The Appraisal Institute, Uniform Appraisal Standards for Federal Land Acquisition (2000), p. 54.

⁹ The Appraisal Institute, The Dictionary of Real Estate Appraisal, 5th ed., p. 202 (Municipality Exhibit B).

Along with consideration of the unit method, it is important to understand the Property's highest and best use. This concept requires determination of the "the reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value."¹⁰ The parties generally agree the highest and best use of the Property was its present use as a pipeline.

In the Town, this highest and best use is as a 4.95-mile long segment that is part of a 165.77-mile long, integrated crude oil pipeline. (Taxpayer Finding No. 7.) The board finds the 4.95-mile segment in the Town does not have significant "stand alone" value, making undue reliance on the cost approach inappropriate.

In other words, valuing the entire pipeline as a single economic unit and then allocating values to the Town results in a more credible opinion of value that is consistent with the Property's highest and best use. Clearly, if the Property were somehow removed from the pipeline, its value would be far less (i.e., "scrap metal" value: see Taxpayer Finding No. 8) and the market value of the remainder of the pipeline would also be significantly diminished. The Property is an integral part of the whole economic unit and if it were valued in isolation it would not be valued at its highest and best use. These findings are consistent with a recent property tax appeal decided by the board regarding a golf course located within two towns: Shelburne and

¹⁰ The Appraisal Institute, The Appraisal of Real Estate, 11th ed. (1997), p. 297.

Gorham. (See Androscoggin Valley Country Club v. Town of Gorham, BTLA Docket No. 22744-06PT, 23419-07PT (May 26, 2009) pp. 4-5).¹¹

1. The Parties' Differing Market Value Estimates

Valuing pipeline or other public utility property can be a daunting and complicated exercise where experts can, and often do, disagree. Each party relied upon expert appraisals and testimony in their presentations.

The Taxpayer relied on the Davis Appraisals to establish the disproportionality of the assessments. As noted above, Davis estimated market values of \$2.324 million in 2008, \$2.545 million in 2009 and \$2.503 million in 2010, “using a combination of the income and cost approaches.” (Taxpayer Finding No. 16.) The Taxpayer argued these values were reasonable and reflect the market value of the Property in each tax year. As an indication of reasonableness, the Taxpayer noted the Davis market value estimates are higher than the estimates in the DRA Appraisals (approximately \$1.6 million in 2008; \$1.3 million in 2009; and \$1.3 million in 2010) made for purposes of the RSA 83-F Utility Property Tax.

The Town relied on the Sansoucy Appraisal to establish the proportionality of the assessments. As noted above, Sansoucy, after making various changes and adjustments for

¹¹ As stated in that appeal:

The board will first address the argument made by Gorham that the two lots which comprise the Golf Course should be valued separately based on the amount of land and improvements located in each municipality (rather than on the basis of an allocation of the value of the Golf Course as a whole between the two municipalities). Gorham’s position on this issue is not sustainable because there is no reasonable likelihood the Golf Course will cease being used for this purpose in the foreseeable future or that highest and best use considerations suggest the optimal uses to which the parcels should be put are segmented and diverse....

The board finds it is more reasonable to value the Golf Course as a whole, given its unified and long-standing use as a recreational property and operations a single economic unit.

Id.

“errata,” estimated market values of \$6.6 million in 2008, \$6.9 million in 2009 and \$6.0 million in 2010, using the cost approach. (Cf. Town Finding No. 33.)

In brief, the parties’ market value estimates are approximately \$4.3 million apart (in 2008 and 2009) and \$3.5 million apart (in 2010). The board’s task is to make reasonable market value findings for each tax year based on the evidence presented.

2. Market Value Findings

In making market value findings, the board considers and weighs all of the evidence, including the respective appraisals of each party, applying the board’s “experience, technical competence and specialized knowledge” to this evidence. See RSA 71-B:1; and former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board has the ability, recognized in the statutes, to utilize its “experience, technical competence and specialized knowledge in evaluating the evidence before it”). Further, where there is conflicting evidence, the board must determine for itself the weight to be given each piece of evidence. As our supreme court has noted, “Given all the imponderables in the valuation process” for public utility property, “judgment is the touchstone.” Public Service Co. of N.H. v. Ashland, 117 N.H. 635, 639 (1977), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974); cf. Appeal of Public Serv. Co. of N.H., 124 N.H. 479, 484 (1984).

The authorities cited by the parties and the board’s own research reflects the difficulty of this task for a pipeline or other utility operating in multiple municipalities. Courts have candidly recognized the challenge of finding a universally accepted method for estimating the market value of property owned and operated by a regulated utility that is rarely purchased or sold in arm’s-length transactions.

The Property in these appeals has been owned by the Taxpayer for many years and has not been offered for sale. Nor is there evidence of comparable sales of pipeline property which either party or the board can rely on. Consequently, both parties and the DRA did not use the comparable sales approach to value the Property.¹² Instead, Sansoucy relied entirely on the cost approach and Davis relied on the cost and income approaches.

The board considered the extensive testimony of each expert witness (Davis and Sansoucy), both on direct and cross-examination, along with their qualifications and experience in valuing this type of property.¹³ The board weighed this evidence in determining the credibility of the value conclusions of each witness. The board will not, in its findings, discuss at any length the many areas of contention between these experts. Instead, the board will briefly state the material issues resolved in order to make its own market value findings.

The Davis Appraisals use a “system or unit approach” to arrive at its market value opinions, which is a “unitary method” where the “operating assets” are valued as a “system, not as individual assets or pieces of the system.” (See, e.g., Taxpayer Exhibit No. 13, p. 7.) Davis considered all three approaches (income, cost and sales comparison) but used the income and cost approaches because of the lack of comparable sales data. (Id. at pp. 15-17.)

¹² See, e.g., Davis’ discussion of the sales comparison approach and why he did not use it in Taxpayer Exhibit Nos. 13, 14 and 15, pp. 15-17.

¹³ Mr. Davis is a professional appraiser with an MAI certification who has specialized in appraising utility properties for the past twenty (20) years and has been qualified as an expert appraiser in a number of jurisdictions. He testified to his experience in appraising pipeline property, including multi-state gas transmission pipelines, gas gathering pipelines and “product pipelines” (finished/refined oil rather than crude oil). In its cross-examination, the Town established Mr. Davis was not a licensed real estate appraiser in New Hampshire.

Mr. Sansoucy is the principal of “GES,” an engineering and appraisal consulting company. He is a registered professional engineer (“P.E.”) who has experience designing and constructing sewer, water and hydroelectric pipelines, including preparation of cost estimates. His work shifted to appraisals and assessments, starting about 1990. He is a certified general real estate appraiser in ten states and a certified assessing supervisor in New Hampshire. He has been the Town’s contracted assessor for approximately twenty (20) years. Mr. Sansoucy testified he also has some experience in valued natural gas transmission and distribution pipelines.

For his income approach, Davis estimated “Future Free Cash Flows” using five years of “Net Carrier Operating Income”¹⁴ and developed an “Estimated Income” for each year. (*Id.*, pp. 8-9 and Addendum A.) The ‘factual’ data he used is based on revenue and expense data reported on the FERC (Federal Energy Regulatory Commission) “Form 6” reports filed by the Taxpayer. (*Id.*, p. A-4; see also Taxpayer Finding Nos. 9 and 10.)

Davis estimated income to be \$15 million for 2008, \$14.5 million for 2009 and \$14.8 million for 2010 (using a 5-year moving average of historical Taxpayer data and a ‘linear trend analysis’) and then estimated the cost of capital for each tax year (the “Weighted Average Cost of Capital”), as shown in Addendum B of each of his appraisals. He concluded the capitalization rate was 13.08% in 2008, 10.84% in 2009 and 10.84% in 2010. Davis’ next step was to split the value between “pipeline” and “terminal” operations using FERC data. Another Taxpayer witness (David Cyr, its Chief Financial Officer) testified the Taxpayer generates revenues from transporting oil through its pipeline and also from “terminal” operations, unloading and storing crude oil in South Portland, Maine. (See also Taxpayer Finding No. 4.) Davis concluded 62% of the Taxpayer’s income was attributable to the pipeline.

Davis also developed a cost approach estimate (in Addendum C of each of his appraisals), using Marshall Valuation Service data for the replacement cost new of the pipeline. He then applied physical depreciation (at a rate similar to Sansoucy’s) and then added the value of the “Right of Way” reflected in the municipal assessments of these items (a total of “\$4,691,689”).

In summary, Davis developed both income approach and cost approach estimates of value for each tax year. In his final reconciliation of value, Davis gave 67% weight to the

¹⁴ Davis utilized three methods described as “Straight Average,” “Weighted Average” and “Linear Trend Line Analysis” using historical data. (*Id.*, p. A-2.)

income approach and 33% to the cost approach and then allocated the reconciled value to the Property based upon the length of pipeline in the Town (4.95 miles out of a total of 165.77 miles). (Id., pp. 17-18.)

The board does not agree with all of Davis' key assumptions and does not accept his value conclusions at face value. There is merit in some of the Town's arguments that tend to show Davis understated, to a certain extent, the market value of the Property. (Cf. Town Trial Memorandum, pp. 8-13.) In addition, there is reason to question both the extent of work performed by Davis to arrive at a value and several inconsistencies and misstatements in his testimony brought out on cross-examination. Davis, for example, made no physical inspection of the Property and misunderstood (or misstated) whether or not there was ancillary (pumping station) equipment in his cost estimates which diminished the credibility and weight the board could place on his value conclusions. (See Taxpayer Exhibit No. 16 and Consolidated Hearing Transcript, pp. 201-03 and 214-16.)

Nonetheless, the board finds the Davis Appraisals provide a better starting point for arriving at reasonable findings regarding the value of the Property in each tax year than the Sansoucy Appraisal and therefore placed more weight on the Davis Appraisals. The Sansoucy Appraisal is more detailed and voluminous, presenting a much larger mass of cost and other data. But the board cannot give determinative weight to this mass of Sansoucy data because it was used in a manner inconsistent with the highest and best use of the Property as a 4.95 mile segment of a fully integrated 165.77 mile pipeline. For this fundamental reason, undue reliance on the cost approach as employed by Sansoucy is not justified by the evidence presented.

The Taxpayer noted this reliance led Sansoucy to "wildly fluctuating values for exactly the same pipeline property." (See Taxpayer's Post-Hearing Brief, pp. 6-9 and 14-19.) The board

agrees to some extent that extreme fluctuations in the year to year market value estimates for an established pipeline gives further cause to question the “credibility” and reasonableness of the Sansoucy value conclusions. (Id.)

Davis, on the other hand, placed exclusive reliance on the financial data the Taxpayer reported to FERC in his income approach and did not make any meaningful adjustments. The unadjusted FERC data probably understates the actual income potential of the pipeline because, as the Town noted, the majority of the customers are direct or indirect owners of the Taxpayer who have inter-corporate relationships. The preferences of these customers presumably have some influence on how high the “tariffs” are set for transporting crude oil and for the terminal services the Taxpayer provides as part of its business. A knowledgeable buyer of the Property would recognize the financial/accounting subtleties inherent in such an arrangement and, in all likelihood, would project higher revenues and lower expenses than the FERC figures relied upon by Davis. (Cf. Taxpayer Finding No. 11.)

The board therefore finds it reasonable to adjust Davis’ income estimates upwards. Notwithstanding the “competitive” constraints on revenue enhancement mentioned by the Taxpayer at the hearing, a knowledgeable buyer could reasonably conclude the income could be augmented by about 25%, and the board has done so in its calculations.

Another needed adjustment concerns the appropriate capitalization rate. Davis used different rates (13.08% in 2008 and 10.84% in 2009 and 2010 because he performed a separate appraisal for each year, but there is cause to question whether a hypothetical purchaser would use fluctuating capitalization rates to value the Property. Weighing the evidence as a whole, the board finds an 11% capitalization rate should be applied for all three years.

In his income approach, Davis concluded the split between pipeline generated revenue and other revenue (dockage and storage of oil in South Portland, Maine) is 62%. If pipeline revenue is augmented by 25%, it is reasonable to conclude pipeline revenues will be a higher percentage of total revenues: say 75%.

Insofar as the cost approach is concerned, the board finds Davis understates, to some degree, the likely value of the Property. Davis did not include some cost items (such as pumping stations) in his estimates and probably did not adequately account for the relatively good quality of the pipeline. In addition, the Town presented credible testimony that Davis' cost estimates did not adequately take into account the extreme terrain and environmental conditions inherent in building a pipeline in New Hampshire; these factors would, in all likelihood, lead to higher costs for blasting, river crossings and so forth. For all of these reasons, the board finds it is reasonable to adjust Davis' cost estimates upwards by 25%.

Giving effect to these three adjustments, the board has arrived at value estimates that indicate the stabilized market value of the Property was estimated to be about \$3.65 million in each of these three tax years. The board's calculations are as follows:

	<u>2008</u>	<u>2009</u>	<u>2010</u>
Stabilized income, based on Davis estimates	\$15,000,000	\$15,000,000	\$15,000,000
25% upwards adjustment	\$18,750,000.00	\$18,750,000.00	\$18,750,000.00
Revised cost of capital	11%	11%	11%
Indicated system value using the income approach	\$170,454,545	\$170,454,545	\$170,454,545
Revised allocation (pipeline 75%; dockage/storage 25%)	75%	75%	75%
Indicated pipeline value	\$127,840,909	\$127,840,909	\$127,840,909
Davis' cost estimates -- adjusted upwards by 25%	\$113,977,500	\$111,978,750	\$102,226,250
Reconciled system value (weighted 67% income, 33% cost)	\$123,265,984	\$122,606,397	\$119,388,072
Mile proration (4.95 miles/165.77 miles)	\$3,680,802	\$3,661,107	\$3,565,005
Rounded, stabilized value	\$3,650,000	\$3,650,000	\$3,650,000

While the board understands why each appraiser presented different estimates for each tax year, the board considered the evidence as a whole to arrive at these findings. Consistent with the concept of stabilizing income and expenses, the board finds a likely purchaser would

make some effort to smooth out year to year differences to arrive at a stabilized market value estimate. Moreover, while business values can fluctuate from year to year, even for a mature business, the market value of the taxable real estate component is more likely to be stable over time. In prior decisions, the board has recognized the advantages of stabilizing historical income and expense data to arrive at a more credible and meaningful estimate of market value.¹⁵

Applying the levels of assessment to these market value estimates yields the abated assessments noted above: \$3,840,000 for tax year 2008, \$4,088,000 for tax year 2009 and \$4,384,000 for tax year 2010 (rounded to the nearest \$000). These market value findings are bracketed by the values estimated in the DRA Appraisals and the Sansoucy Appraisal, which is a further indication of their reasonableness.

The board considered the DRA Appraisals but could not place undue weight on them. Neither party argued the board should adopt the values estimated in the DRA Appraisals in these appeals. The board made a number of rulings prior to the hearing to confirm the DRA Appraisals would be admissible in these appeals. (See the board's March 22, 2012, August 24, 2012, October 1, 2012 and November 29, 2012 Orders.) The board therefore disagrees with the Town's continuing arguments that they should be excluded and should not be considered at all.¹⁶

The Taxpayer presented the DRA Appraisals primarily to corroborate and establish the reasonableness of the Davis estimates, which were, as noted above, somewhat higher in each tax year. The preparer of the DRA Appraisals was not called as a witness to testify. For these and other reasons, the board did not place undue weight upon the DRA values.

¹⁵ See, e.g., Varsity Durham, LLC v. Town of Durham, BTLA Docket Nos. 24680-08PT and 253778-09PT (March 9, 2012) at p. 6, and the cases cited therein.

¹⁶ Cf. a recent February 13, 2013 Order entered by Superior Court Judge Timothy J. Vaughn in other public utility tax abatement appeals filed by the New Hampshire Electric Cooperative, Inc. against four municipalities (Grafton County Docket Nos. 11-CV-375, 377, 379 and 379).

The board arrived at its estimates using its own judgment and experience and applying what is often referred to as the proverbial “sanity test.” That test is one that, in the board’s judgment, the much higher Sansoucy estimates cannot satisfy for many of the reasons argued by the Taxpayer. (See, e.g., Taxpayer’s Post-Hearing Brief, pp. 14-24.) Sansoucy based his estimates entirely on the cost approach and focused on the value of the Taxpayer’s assets in the Town rather than as part of an integrated pipeline system which led Sansoucy to estimate values that are much too high and are simply not credible.¹⁷

3. Adjusting Market Values by the Level of Assessment in Each Tax Year

At the hearing, Sansoucy stated under oath that, in his role as Town assessor, he recommended to the Town selectmen that “utility” values should not be equalized at all to arrive at a proportional assessment, but does recommend equalization for other property owners (by applying the level of assessment in the municipality to the market value estimate). The board finds this recommendation is contrary to accepted assessing principles, as well as established case law. See, e.g., Appeal of City of Nashua, 138 N.H. 261, 265-66 (1994), citing Appeal of Andrews, 136 N.H. 61, 63 (1992); and quoting Public Service Co. of N.H. v. Town of Seabrook,

¹⁷ At the hearing and in its Trial Memorandum (pp. 7, 17-18), the Town placed heavy reliance on the 1997 superior court opinion in Tennessee Gas Pipeline v. Hudson (Hillsborough County Docket No. 96-201), but this reliance is misplaced and the board cannot give this opinion undue weight for several reasons. First, the board has concurrent jurisdiction with the superior court in tax abatement appeals. (See RSA 76:16-a and RSA 76:17.) Second, the supreme court final decision in that case [reported at 145 N.H. 598 (2000)] makes no mention of the trial judge’s selection of the cost approach to value the pipeline. A trier of fact has discretion to decide which approach, or combination of approaches, is more credible, based on the evidence presented, and the board has done so here. In addition, and contrary to the Town’s arguments, the board does not find the issues and evidence presented are “virtually identical.” The board therefore does not agree that wholesale reliance on the cost approach is the most reasonable method of valuing the Property. See also the Taxpayer’s Post-Hearing Brief, p. 11:

The criticism of the unit method and the income approach in the [superior court] decision is thus nothing more than commentary of one [s]uperior [c]ourt judge in light of the evidence presented in that case, with little precedential value. It certainly does not stand for the proposition that New Hampshire courts have rejected the unit method or the income approach.

The board agrees with these statements.

133 N.H. 365, 377 (1990) (“our constitution mandates that all taxpayers in a town be assessed at the same proportion of [fair market value].”)

In other words, all property owners should be treated on an equal footing and it makes no sense to apply a different yardstick to a utility than to other taxpayers in the Town. Selective application of the level of assessment creates further conceptual and actual inequities.

Sansoucy’s only justification for doing so is the relatively high values of utility properties, but the board finds neither the statutes nor the case law allow for such selectivity in the application of the level of assessment.

Consequently, and as noted above, the board finds the assessments on the Property should be based on market values adjusted by the levels of assessment (the median ratios) in each year. The board expects the Town to apply this approach consistently for all taxpayers in all of the municipalities where he may have assessing responsibilities.

C. Summary

In summary, the board finds the Taxpayer met its burden of proving disproportionality and the assessment on the Property should be abated to: \$3,840,000 in tax year 2008; \$4,088,000 in tax year 2009; and \$4,384,000 in tax year 2010.

If the taxes have been paid, the amount paid on the value in excess of these abated assessments shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively “rehearing motion”) within thirty (30) days of the clerk’s date below, not the date this decision is received. RSA 541:3; Tax 201.37. The rehearing motion must state with

specificity all of the reasons supporting the request. RSA 541:4; Tax 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule Tax 201.37(g). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Albert F. Shamash, Member

Theresa M. Walker, Member

Addendum A

The proposed findings of fact and conclusions of law filed by each party are replicated below, in the form submitted and without any typographical corrections or other changes. The

board's responses are in **bold face**. With respect to the board's responses, "neither granted nor denied" generally means one of the following.

- a. the request contained multiple requests for which a consistent response could not be given;
- b. the request contained words, especially adjectives or adverbs, that made the request overly broad or narrow so that the request could not be granted or denied;
- c. the request contained matters not in evidence or not sufficiently supported to grant or deny;
- d. the request was irrelevant; or
- e. the request is specifically addressed in the decision.

TAXPAYER'S PROPOSED FINDINGS

1. PPL operates two crude oil pipelines running through 27 towns from South Portland, Maine to the Canadian border in northern Vermont where they connect to pipelines of Montreal Pipe Line, Limited. Tr. 36.

Granted.

2. PPL's 18 inch pipeline was idled in 2011 and its 24 inch pipeline continues to transport crude oil in a northerly flow. Tr. 20.

Granted.

3. PPL is regulated by the Federal Energy Regulatory Commission (FERC) as a common carrier of crude oil and files a tariff with FERC for the transportation of crude oil through the pipelines, including the unloading of the oil at its marine terminal. Ex. 29.

Granted.

4. The tariff is filed on a "unitary basis", meaning that PPL's customers pay a single rate for shipping crude oil from South Portland, Maine to the Canadian border, comprised of the pipeline transportation charge and the terminal charge. Tr. 37; Ex.29.

Granted.

5. Consistent with industry practice, the tariff charge is not broken down by individual municipalities through which the pipelines pass. Tr. 95.

Neither granted nor denied.

6. The only way to allocate income by municipality from this fully integrated pipeline system is to take the unitary pipeline income and allocate it to each municipality based on some reasonable method, such as mileage. Tr. 95.

Neither granted nor denied.

7. The 4.95 miles of the pipelines that pass through the Town of Gorham are part of an integrated, 166 mile crude oil delivery system.

Granted.

8. If the 4.95 miles of pipelines in Gorham were severed from the rest of the system, they would have no useful value other than possibly as scrap metal if the price of scrap justified the cost of removal of the buried pipe. Tr. 204.

Granted.

9. PPL is required to file a Form 6 with FERC annually, which is a complete financial report that includes detail of its income and expenses, and separately reports PPL's income from its terminal operations and its income from trunk line operations. Tr. 32, 34, 37.

Granted.

10. Form 6 is prepared in accordance with generally accepted accounting principles (GAAP), certified to be accurate by a corporate officer under criminal penalty, and the underlying financial statement information is independently audited annually by PPL's external auditors. Tr. 198.

Granted.

11. Any purchaser of PPL would likely use the income and expenses shown on Form 6 to analyze how much to pay for the pipeline assets.

Neither granted nor denied.

12. The volume of crude oil transported through the pipelines has been steadily declining due in part to the closure of a refinery in Montreal and a shift in the market demand for imported oil transported through PPL. Tr. 22, Ex. 18.

Granted.

13. The pipeline system serves one remaining refinery in Montreal from the original six refineries and one refinery in Ontario. Tr. 20, 21, 43.

Granted.

14. In 2007, the pipeline system carried 348,000 barrels of oil per day; volumes have continued to decrease to 275,000 in 2010 and to 155,000 in 2012. Ex. 18.

Denied.

15. While the volumes transported in the pipelines have been steadily declining, the Town has steadily increased the assessed value of the pipeline -- by 33% from the Town's valuation of \$4.5 million in 2008 to its valuation of \$6 million in 2010. Ex. 18.

Neither granted nor denied.

16. PPL's expert, Dr. John Davis, using a combination of the income and cost approaches, opined that the fair market value of the pipeline was \$2,324,000 in 2008, \$2,545,000 in 2009 and \$2,503,000 in 2010. Ex. 13, 14, 15.

Granted.

17. Dr. Davis's reports and his testimony relied on generally accepted appraisal methodologies and generally accepted sources of data, including Marshall Valuation Service, FERC Form 6 reports, Value Line Investment Survey, and Ibbotson SBBI Valuation Yearbook. Ex. 13, 14, 15, and Addenda thereto.

Neither granted nor denied.

18. The New Hampshire Department of Revenue Administration (DRA) is constitutionally required annually to determine the fair market value of the pipeline property in order to assess the State utility property tax pursuant to RSA 83-F.

Neither granted nor denied.

19. The DRA is totally independent of both PPL and the Town, and it has decades of experience valuing pipelines and other utility properties.

Granted.

20. As a revenue raising agency, the DRA has absolutely no incentive to deflate the value of the property it assesses.

Neither granted nor denied.

21. For all of these reasons, the DRA's appraisals are important independent evidence of value that should be given substantial weight in this case.

Neither granted nor denied.

22. Like Dr. Davis, the DRA used a combination of income and cost approaches to value the PPL pipeline property. Ex. 10, 11, 12.

Granted.

23. The DRA determined the fair market value of the pipeline in the Town of Gorham to be \$1,600,028 in 2008, \$1,346,402 in 2009 and \$1,286,545 in 2010. Ex. 10, 11, 12, 28.

Granted.

24. The Town employed George Sansoucy both to revalue the utility property in the Town in 2007 and 2008, and to serve as its expert in this case.

Granted.

26. Mr. Sansoucy refused to use any income valuation approach, saying that he is "not ready" to do one. Tr, 271.

Neither granted nor denied.

26. Mr. Sansoucy relied solely on cost-based methodologies, which he has changed several times over the course of this case and resulted in dramatically fluctuating values for exactly the same pipeline property.

Neither granted nor denied.

27. For the 2008 tax year alone, Mr. Sansoucy certified as accurate four different values for the pipeline, ranging from a low of \$4.54 million to a high of \$7.37 million – a figure that is 62% higher than the original assessed value.

Neither granted nor denied.

28. The difference between Mr. Sansoucy’s “errata” figure for 2008, calculated less than one month before trial (\$6,591,000) and his February 19, 2012 “court-ready” appraisal figure for 2008 of (\$7,371,000) was \$780,000 or 10.6%. -- a difference that resulted from a single timing change made by Mr. Sansoucy in indexing costs (using January 1 as the indexing date, instead of July 1).

Neither granted nor denied.

29. While PPL’s throughput volumes were steadily declining, Mr. Sansoucy’s valuation for the years at issue started at \$4.54 million in 2008, reached over \$7.37 million in February, 2012, then settled at \$6 million in 2012 as the result of a simple indexing change.

Neither granted nor denied.

30. Mr. Sansoucy’s final value for 2010 is 32% higher than the initial value for 2008 for the same pipeline property that was 2 years older, carrying substantially lower volumes. See Ex. 18.

Neither granted nor denied.

31. This Board, and the New Hampshire Supreme Court have specifically held that the income approach (also known as “capitalized earnings” approach) is a valid approach in the case of a water and gas pipelines. *See Tennessee Gas Pipeline Co. v. Town of Hudson*, 145 N.H. 598 (2000); *In re Pennichuck Water Works, Inc.*, 160 N.H. 18, 38 (2010); *Rosebrook Water Co., Inc. v. Town of Carroll*, 19382-01PT, 03/24/2004.

Granted.

32. The income approach is particularly relevant in the case of income producing property such as the pipelines, as it measures the present value of the future benefits of property ownership. *See*, *Appraisal of Real Estate*, 13th ed. at 142.

Neither granted nor denied.

33. Any arm’s length purchaser of the pipeline property would be more interested in the return on investment than the depreciated cost of the property in determining the price it would be willing to pay for the property.

Neither granted nor denied.

34. Like the smaller water pipeline system involved in the *Rosebrook* case, PPL's pipeline property has an identifiable physical plant, and through the FERC Form 6, has readily available and accurate income and expense information.

Granted.

35. Although Mr. Sansoucy did not perform an income approach, Mr. Sansoucy conceded in his report that "the income approach is considered to be, in appropriate circumstances, the best means of estimating the value of an income producing property." Municipal Ex. J, at 51.

Granted.

36. It is of critical importance to apply more than one approach to valuation, as one approach serves as a validation check of the other.

Neither granted nor denied.

37. Mr. Sansoucy's sole reliance on the cost approach, and his refusal to undertake any income-based analysis, renders his opinions of little utility in determining the real fair market value of PPL's property.

Neither granted nor denied.

38. The portion of the pipeline property that runs through the Town of Gorham is part of a "unified," 166 mile pipeline system that operates as a "single economic unit."

Granted.

39. Considering the 4.95 mile Gorham portion of the pipelines in isolation is unreasonable and illogical because no one would purchase just that portion of the pipeline system because it has absolutely no value (other than perhaps scrap value) without being part of the unified pipeline system. See *KGI Gorham, LLC v. Town of Gorham*, Docket Nos.: 23628-07PT/24616-08PT (N.H. BTLA 2010).

Granted, except the case cited appears to be incorrect: See Androscoggin Valley Country Club v. Town of Gorham, BTLA Docket No. 22744-06PT, 23419-07PT (July 9, 2009), cited and discussed in the Decision, pp. 9-10.

40. In previous property tax litigation between the same parties, the New Hampshire Superior Court credited the income approach employed by both PPL's expert at the time and the DRA, and used the mileage method (instead of the DRA's original cost method) to allocate the value to the Town of Gorham. *Portland Pipe Line v. Town of Gorham*, Coos County Superior Court No. 93-E-76 (Aug. 12, 1994).

Neither granted nor denied.

41. The mileage method is a reasonable means of allocating the value of the integrated pipelines to the Town of Gorham.

Granted.

42. The inconsistency of Mr. Sansoucy's ten different certified valuations of the pipeline for the three years at issue means that his valuations are not credible and no weight can be given to them.

Neither granted nor denied.

43. The value of PPL's property in Gorham – two pipes in the ground - is certainly far more stable than Mr. Sansoucy's inconsistent and volatile calculations indicate.

Neither granted nor denied.

44. There is no evidence that market conditions would result in such swings in value. If anything, it stands to reason that value of the pipeline property should be declining, given the sharply decreasing throughput and ever increasing age of the pipelines.

Neither granted nor denied.

45. Mr. Sansoucy's valuation results in a value that is so high that no owner of the pipeline could generate a return on and of its investment, plus operating costs, under current FERC index tariff ceilings. See Attachment A to Post-Hearing Brief.

Neither granted nor denied.

46. PPL's tariff rates cannot exceed the ceiling rates ordered by FERC, and a purchaser of the pipeline would simply inherit the existing FERC index ceiling rates. Tr. 491-492.

Granted.

47. Dr. Davis's application of the cost and income approaches was credible and persuasive, and the values arrived at by Dr. Davis fairly represent the market value of PPL's property in the Town of Gorham as follows:

2008	\$2,324,000
2009	\$2,545,000
2010	\$2,503,000

Denied.

48. In the alternative, the valuations determined by the DRA reasonably and fairly represented the market value of PPL's property in the Town of Gorham as set forth below, and lend further credibility to the values arrived at by Dr. Davis:

2008	\$1,600,028
2009	\$1,346,402
2010	\$1,286,545

Ex. 10, 11, 12.

Neither granted nor denied.

49. The weighted mean equalization ratios stipulated by the parties should be applied in 2008 and 2009 and the median ratio stipulated by the parties should be applied in 2010.

Denied.

50. PPL has carried its burden of proving that the Town's assessments for 2008, 2009 and 2010 were disproportionate to the general level of assessment in the Town.

Granted.

TOWN'S PROPOSED FINDINGS

1. Portland Pipeline Corporation ("PPL"), as the plaintiff, has the burden to prove that its taxable property in Gorham was in the aggregate overvalued and that the total assessment was excessive. Unless it appears more probable than not, on the evidence, that the plaintiff's taxable property was overvalued, the assessments must be sustained. New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974).

Neither granted nor denied.

2. RSA 75:1 provides that all taxable property shall be appraised by the Selectmen at its market value which means the property's full and true value as the same would be appraised in payment of a just debt due from a solvent debtor.

Granted.

3. Market value under RSA 75:1 has been defined by the New Hampshire Supreme Court as the price which the property will bring in a fair market after reasonable efforts have been made to find a 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). “The value of property is what it is worth in money, what it will bring in money to the seller, what it will cost the buyer to obtain it.” Grafton County Electric Light Co. v. State, 78 N.H. 330, 334 (1970).

Granted.

4. The highest and best use of PPL’s property on April 1 of each of the years under appeal was a crude oil transmission pipeline system.

Granted.

5. All the taxable properties of PPL at issue would be reproduced or replaced if they did not already exist.

Neither granted nor denied.

6. The market value of PPL’s property is the price which, in all probability, would have been arrived at on April 1 of each of the years under appeal, upon fair negotiations between an owner willing to sell and a purchaser desiring to buy such properties, taking into account all circumstances and facts which might be brought forward and reasonably be given consideration in such bargaining.

Granted.

7. The definition of market value may not exclude PPL itself as a potential purchaser. Public Service Co. v. New Hampton, 101 N.H. 142, 146-47 (1957).

Granted.

8. The unit method of valuation which values the entire PPL system located in three states and the Province of Quebec, Canada and consisting of approximately 236 miles of pipeline and then allocates a portion of that value to the 4.95 mile section in Gorham, New Hampshire is unreliable and is rejected by the Board for the following reasons:

(a) it is not property specific enough to enable the Board to make a determination of value of the property in the specific taxing jurisdiction of Gorham. Public Service Co. of NH v. Town of Deerfield, BTLA Docket Nos. 1369-81, 22, 28-82, 2617-83 (January 22, 1990) at 4; Public Service Co. of NH v. Town of Newmarket, BTLA Docket Nos. 1292-81, 2078-82, 2615-83, 2910-84 (January 17, 1990) at 4; Public Service Co. of NH v. Greenland, BTLA Docket Nos. 1256-81, 1937-82 (February 28, 1990) at 4;

(b) it values the business enterprise rather than the real estate in Gorham. Transcontinental Gas v. Bernards Township, 545 A.2d 746, 753 (1988); Public Service

Co. of NH v. Bow, Merrimack County Superior Court No. 88-E-00161-B at 8,9 (October 15, 1993); Tennessee Gas Pipeline Co. v. Town of Hudson, Hillsborough County Superior Court, Southern District, No. 96-E-201 (November 6, 1997) at 8; In the Matter of the Appeal of Western Resources, Inc., 919 P. 2d 1048, 1054 (Kansas, 1996).

(c) because it values the business as a going concern, it does not necessarily include the fair market value of all of the component parts. In the Matter of the Appeal of Western Resources, Inc., supra at 1053.

(d) the unit value of a going business might be less than the fair market value of the tangible, real, and intangible property which make up the assets of the business. In the Matter of the Appeal of Western Resources, Inc., supra at 1053.

(e) it includes the effects of property outside the taxing jurisdiction and fails to focus on the contribution of the Gorham property alone. Public Service Co. of NH v. Bow, Merrimack County Superior Court, supra at 8,9; Public Service Co. of NH v. Bow, 139 N.H. 105, 107 (1994);

(f) its use of an allocation measure is unreliable and does not ensure equitable tax treatment. Public Service Co. of NH v. Bow, Merrimack County Superior Court, supra at 9,10; Public Service Co. of NH v. Bow, 139 N.H. 105, 107 (1994); Transcontinental Gas Pipeline v. Bernardstownship, supra, at 753, 754;

(g) the diverse assets of the PPL system do not contribute to its value in a manner exactly proportional to the number of miles of pipeline in each municipality through which it passes. Public Service Co. of NH v. Bow, Merrimack County Superior Court, supra at 10.

(h) it is inconsistent with the legislative intent to have property evaluated on a site specific basis by the selectmen of the town where the property is located. RSA 72:8, 9; 72:12 and 73:10; Public Service Co. of NH v. Bow, Merrimack County Superior Court, supra at 8;

(i) it is based upon an economic theory that the value of the parts cannot exceed the value of the whole which has been rejected by this Board; Public Service Co. of NH v. Town of Farmington, BTLA Docket Nos. 1281-81, 1940-82 (April 3, 1990) at 4 (Gorham, Exhibit F);

(j) it has been rejected by the Legislature because it would erode local tax base and infringe on home rule. NHHR Jour. 270, 1981; see also Public Service Co. of NH v. Town of Ashland et al, BTLA Docket No. 0439-80 (October 19, 1981) at 9; Public Service Co. of NH v. Bow, Merrimack County Superior Court, supra at 7, 8 .

Neither granted nor denied.

9. A determination of value made by the Department of Revenue Administration (DRA) for PPL's property in New Hampshire for purposes of the utility property tax under RSA 83-F is not required to be allocated to Gorham or any other town.

Neither granted nor denied.

10. The allocation by DRA of the value determined by it for purposes of RSA 83-F to the towns in which PPL property is located is performed solely for the purpose of equalization under RSA 21-J:3(XIII).

Neither granted nor denied.

11. The value of the PPL property allocated to Gorham by the DRA using an allocation based on original cost does not constitute fair market value. Appeal of Colorado Interstate Gas, 14 p. 3d 1099, 1104 (2000) (citing PPL's expert that "it was impossible to achieve fair market value with an original cost allocation factor because it fails to take into account the age and condition of the plant and equipment.") Accord PSNH v. Bow, supra p. 11, 12.

Neither granted nor denied.

12. The approaches to market value for utilities laid down by the Supreme Court in New England Power v. Littleton, supra at 598 include (1) net book cost; (2) reproduction or replacement cost less depreciation; (3) comparable sales; (4) capitalized earnings; and (5) cost of a comparable or alternative plan.

Granted.

13. The parties have not presented evidence or relied on the net book cost approach or the comparable sales approach.

Granted.

14. The replacement or reproduction cost approach to value is based upon the premise that a purchaser would pay no more for the property than the cost of producing an equally desired substitute. This methodology involves estimating the reproduction or replacement cost new of the property and deducting from it all forms of depreciation.

Neither granted nor denied.

15. The cost approach is the most reliable method of valuing special purpose utility properties such as the property of PPL in Gorham. The Appraisal of Real Estate, 13th Edition, p. 382; Public Service Co. of NH v. New Hampton, supra at 147,148; Public Service Co. v. Ashland, 117 N.H. 635 (1977); Appeal of Public Service Co., 124 N.H. 479 (1984); Public Service Co. v. Bow, 138 N.H. 105 (1994); Southern NH Water Co. v. Hudson, 139 N.H. 139 (1994); Tennessee Gas Pipeline Co. v. Town of Hudson, Hillsborough County Superior Court, supra at 8, 15,16; Tennessee Gas Pipeline Co. v. Town of Hudson, 145 N.H. 598 (2000); Transcontinental Gas v. Bernardstownship, supra at 756; Public Service Co. v. Town of Greenland, supra at 4; Public Service Co. of NH v. Town of Newmarket, supra at 4; Public Service Co. of NH v. Deerfield, supra at 4.

Neither granted nor denied.

16. Using the cost less depreciation approach, an appraiser is able to identify and assess the Gorham portion of the pipeline separately from the rest of the PPL system. Tennessee Gas Pipeline v. Hudson, supra, p.8.

Denied.

17. Reproduction or replacement cost less depreciation is the only approach to value which places PPL on an equal footing with all other taxpayers of Gorham recognizing the appreciation in the value of its property in the years since original construction.

Denied.

18. Gorham's replacement costs are reliable and supported by the evidence.

Denied.

19. Gorham's method of depreciation is the proper method for determining fair market value for purposes of *ad valorem* taxation.

Neither granted nor denied.

20. Gorham's computation of the physical life of a pipeline at 75 years is supported by the evidence. Transcontinental Gas v. Bernards Township, supra at 759 ("Virtually infinite", "100 year functional life not unreasonable").

Neither granted nor denied.

21. The use of the income approach or capitalized earnings in Gorham is entitled to little or no weight. Because the income method used by PPL and the DRA values the enterprise or business of PPL in Gorham rather than its utility property, it defeats the purpose of the income approach in *ad valorem* taxation which attempts to capitalize the income of the real property separately from the value of the business using the property. Transcontinental Gas v. Bernards Township, supra at 753. See also Grafton County Electric Co. v. State, supra at 543.

Denied.

22. The income method used by PPL's expert was flawed because he failed to omit from operating expenses in his reconstructed operating statement depreciation, amortization, interest, expense, additions to capital, inventory adjustments for oil loss and income tax. The Appraisal of Real Estate, 13th Ed., p. 493. (Exhibit D)

Neither granted nor denied.

23. The income method used by PPL's expert was flawed because he relied on actual rather than market income and expense and his capitalization rate was not market based on support Cheney East Corp., v. Newmarket, BTLA Docket 10016-90 February 2, 1994.

Neither granted nor denied.

24. When an operating statement is properly reconstructed and a market based multiple of earnings before income tax, depreciation and amortization ("EDITDA") or capitalization rate is applied, the income method provides support for the values derived by the Town's expert utilizing the cost approach. Cheney East Corp., v. Newmarket, BTLA Docket No. 10016-90, Nov. 3, 1993 (copy attached). See analysis of PPL reconstructed operating statement at p. 14-16 of Gorham's Trial Brief submitted herewith.

Neither granted nor denied.

25. The income or capitalized earnings method used by PPL and the DRA is unreliable because it reflects management skills, or lack thereof, rather than the value of the property itself; it may be manipulated for tax or other reasons; it relies upon capitalization methods and rates that can be chosen with specific ends in mind; and it fails to recognize that property may be purchased for reasons such as capital appreciation or tax benefits that have nothing to do with positive income values. Public Service Co. v. Farmington, BTLA Docket No. 1281-81, 1940-82 (April 3, 1990) at 3 (copy attached); Public Service Co. v. Town of Newmarket, supra at 4; Public Service Co. of NH v. Deerfield, supra at 4; Public Service Co. v. Town of Greenland, supra at 4.

Neither granted nor denied.

26. The income method is not reliable when used on a statewide basis because it tends to average the income potential of all PPL's property and thus fails to recognize the differential values that exist for various components of its integrated system. Public Service Co. v. Bow, BTLA Docket No. 1980-82 at 13 (copy attached).

Neither granted nor denied.

27. The income method relied upon by PPL is not reliable because the income figures used are for the enterprise and not the rental value of the real estate. Public Service Co. v. Farmington, supra at 3, 4.

Neither granted nor denied.

28. The median equalization ratio for the Town of Gorham for the property tax years at issue were:

2008	105.2
2009	108.1
2010	110.2

Denied.

29. Because the fair market value of PPL's property in Gorham as equalized in tax year 2008 exceeds its assessed value, PPL has failed to show cause for relief.

Denied.

30. Because the fair market value of PPL's property in Gorham as equalized in tax year 2009 exceeds its assessed value, PPL has failed to show cause for relief.

Denied.

31. Because the fair market value of PPL's property in Gorham as equalized in tax year 2010 exceeds its assessed value, PPL has failed to show cause for relief.

Denied.

32. PPL failed to meet its burden of proof that its taxable property in Gorham was in the aggregate overvalued, that the assessments on its property were excessive or that it paid a disproportionate tax.

Denied.

33. The fair market value of PPL's taxable property for the years under appeal was:

2008	\$6,591,000.00
2009	\$6,847,000.00
2010	\$6,006,000.00

Denied.

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Jonathan A. Block, Esq. and Jeffrey M. White, Esq., Pierce Atwood LLP, Merrill's Wharf, 254 Commercial Street, Portland, ME 04101, counsel for the Taxpayer; Chairman, Board of Selectmen, Town of Gorham, 20 Park Street, Gorham, NH 03581; Robert Upton, II, Esq., Upton & Hatfield LLP, 23 Seavey Street, PO Box 2242, North Conway, NH 03860, counsel for the Town; and George E. Sansoucy, PE, LLC, 89 Reed Road, Lancaster, NH 03584, Contracted Assessing Firm.

Date: 7/22/13

Anne M. Stelmach, Clerk