

**Great Lakes Hydro America, LLC v. City of Berlin  
Docket Nos.: 25531-10PT/26219-11PT**

**and**

**Great Lakes Hydro America, LLC v. Town of Gorham  
Docket Nos.: 25532-10PT/26220-11PT**

**AMENDMENT TO THE DECISION**

As stated in the Order issued concurrently herewith, the board hereby amends the five pages of the October 16, 2014 Decision (pages 6, 23, 24, 37 and 38; see Attachment A) to correct an inadvertent error affecting five cells in one spreadsheet (referenced as the “2011 Riverside DCF” in the November 14, 2014 “Joint Motion for Reconsideration and Rehearing” filed by the “City” and the “Town” and the December 3, 2014 “Opposition” filed by the “Taxpayer”). The error is explained on pages 3-4 of the Order which grants partial reconsideration of the Decision for this reason. Correction of the error increases the estimated market value of the Taxpayer’s property in the City in tax year 2011 only, reducing the extent of disproportionality to \$361,600 (as shown on page 6 of Attachment A).

Pursuant to RSA 541:6, any appeal of the Decision (as hereby amended) must be by petition to the supreme court filed within thirty (30) days of the Clerk’s date shown below, with a copy provided to the board in accordance with Supreme Court Rule 10(7).

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Michele E. LeBrun, Chair

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Albert F. Shamash, Member

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Theresa M. Walker, Member

**CERTIFICATION**

I hereby certify copies of the above Amendment to the Decision have this date been mailed, postage prepaid, to: William L. Plouffe, Esq. and Matthew H. Upton, Esq., DrummondWoodsum, 84 Marginal Way – Suite 600, Portland, ME 04101, counsel for the Taxpayer; Peter J. Crossett, Esq., Hiscock & Barclay, One Park Place, 300 South State Street, Syracuse, NY 13202, co-counsel for the Taxpayer; Christopher L. Boldt, Esq., Donahue, Tucker & Ciandella, PLLC, PO Box 214, Meredith, NH 03253, counsel for the City of Berlin; Robert Upton, II, Esq., Upton & Hatfield, LLP, P.O. Box 2242, North Conway, NH 03860, counsel for the Town of Gorham; Chairman, Board of Assessors, City of Berlin, 168 Main Street, Berlin, NH 03570; Chairman, Board of Selectmen, Town of Gorham, 20 Park Street, Gorham, NH 03581; and George E. Sansoucy, PE, LLC, 89 Reed Road, Lancaster, NH 03584, Contracted Assessing Firm.

Dated: 01/02/15

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Anne M. Stelmach, Clerk

**ATTACHMENT A**

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	<b>Board's Market Value Findings</b>	<b>Equalization Ratio</b>	<b>Resulting Assessment</b>	<b>Compared to Assessments Under Appeal</b>	<b>Extent of Disproportionality</b>
<b><u>2010</u></b>					
Riverside	\$ 13,000,000	101.8%	\$ 13,234,000		
Cross	\$ 6,600,000	101.8%	\$ 6,718,800		
Sawmill	\$ 6,500,000	101.8%	\$ 6,617,000		
<b>City Total:</b>	<b>\$ 26,100,000</b>	101.8%	<b>\$ 26,569,800</b>	<b>\$35,400,000</b>	<b>\$8,830,200</b>
Cascade	\$ 18,200,000	120.1%	\$ 21,858,200		
Gorham	\$ 8,900,000	120.1%	\$ 10,688,900		
<b>Town Total:</b>	<b>\$ 27,100,000</b>	120.1%	<b>\$ 32,547,100</b>	<b>\$29,400,000</b>	<b>None</b>
<b><u>2011</u></b>					
Riverside	<b>\$ 14,600,000</b>	122.8%	<b>\$ 17,928,800</b>		
Cross	\$ 6,600,000	122.8%	\$ 8,104,800		
Sawmill	\$ 6,600,000	122.8%	\$ 8,104,800		
<b>City Total:</b>	<b>\$ 27,800,000</b>	122.8%	<b>\$ 34,138,400</b>	<b>\$34,500,000</b>	<b>\$361,600</b>
Cascade	\$ 21,000,000	114.2%	\$ 23,982,000		
Gorham	\$ 9,500,000	114.2%	\$ 10,849,000		
<b>Town Total:</b>	<b>\$ 30,500,000</b>	114.2%	<b>\$ 34,831,000</b>	<b>\$30,600,000</b>	<b>None</b>

Consequently, the Taxpayer’s 2010 and 2011 appeals are granted in the City and denied in the Town for the following reasons.

A. Introduction

1. The Property

The Property consists of five hydroelectric facilities situated along the Androscoggin River.<sup>1</sup> Each “hydro” consists of “a dam, a powerhouse, and associated equipment and land and generates electricity and related services for sale” and each is described as a “run-of-the-river,” intermittent hydroelectric electric dam, which means the hydro operator “cannot vary the

<sup>3</sup> The Androscoggin River flows from Maine into New Hampshire and then back into Maine. There are a total of ten hydroelectric dams on the Androscoggin River in New Hampshire and additional dams in Maine. [Cf., Traub 2010 Berlin Appraisal (Taxpayer Exhibit No. 3), p. 42.]

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by the effective tax rate in each municipality is appropriate. These estimates are shown in the board's DCFs.<sup>2</sup>

### 5. Market Value Findings and Tests of Reasonableness

The board's detailed market value findings are stated above. These findings indicate a total market value of \$53.2 million in tax year 2010 and **\$58.3** million in tax year 2011 for the five hydros. These hydros have a combined nameplate of approximately 27MWs, indicating the board's estimates equate to about \$2 million per MW.

As one test of reasonableness, the board reviewed the limited information of sales of hydros in the Traub and Sansoucy Appraisals. (See, e.g., Traub 2010 Berlin Appraisal, pp. 115-20; and Municipality Exhibit B, Sansoucy Appraisal, pp. 57-68.) These sales included hydros located in NH, VT, ME, NY and WI. Focusing on the northeast (NH, VT, ME and NY) hydros and on sales occurring between 2006 and 2010, there were a total of ten sales, five of which were mentioned by both appraisers.<sup>3</sup> These sales give a rough indication that hydros were selling in the market in the range of approximately \$1.8 million to \$3.5 million per MW of nameplate. As Mr. Traub recognized, the majority of these sales were negotiated when electric prices were substantially above the actual prices being paid in 2010 and 2011. (See Traub 2010 Berlin Appraisal, p. 119.) Therefore, the board's market value finding of approximately \$2 million per MW, which is near the low end of this range, appears reasonable.

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<sup>22</sup> Further, in contrast to Mr. Traub and in agreement with Mr. Sansoucy, the board used the end of year assumption in its DCF calculations. This is consistent with the board's findings in other appeals. See, e.g., North Country Environmental Services, Inc. v. Town of Bethlehem, BTLA Docket Nos. 19709-02PT, 20384-03PT and 21064-04PT (May 7, 2007), p. 12.

<sup>23</sup> These sales are the: June, 2006 sale of Rumford Falls for \$144,000,000; November, 2007 sale of Sebec for \$1,750,000; December, 2008 sale of Gilman for \$9,000,000; November, 2009 sale of Blackbear for \$95,000,000; and May, 2010 sale of Vermont Marble for \$33,200,000.

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As an additional test of reasonableness, the board compared how the relative values reflected in its specific market value findings matched up with the relative valuations in the Traub and Sansoucy Appraisals. The board, consistent with both appraisers, estimates the highest valued hydro to be Cascade and the lowest valued hydros to be Cross and Sawmill.

Finally, the board notes its findings for 2010 and 2011 indicate approximate increases of **6.5%** in the market value of the hydros in the City (Riverside, Cross and Sawmill) and 12.5% increase in the market value of the hydros in the Town (Cascade and Gorham). Most of these increases result from: the reduced cost estimates for certain capital expenses in 2011 (including the headwater dam repairs and the Goebel Street improvements); the completion of the first phase of the penstock replacement project at Riverside in 2010; and the increased electricity generation of Cascade in 2011. But for these changes, the board's market value findings would have been closer to each other in these two tax years.

### C. Summary

In summary and giving effect to the stipulated equalization ratios, the board finds the Taxpayer met its burden of proving disproportionality with respect to the City's assessments for tax years 2010 and 2011, but not with respect to the Town's assessments for these years. [See the table of market value findings and resulting assessments (at p. 6) and the DCFs (in Addendum A).] Consequently, the City appeals are granted and the assessments abated to \$26,569,800 in 2010 and **\$34,138,400** in 2011, but the Town appeals are denied.

If the taxes in the City have been paid, the amount paid on the value in excess of \$26,569,800 for tax year 2010 and **\$34,138,400** in 2011 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. The Taxpayer has appeals



