

In Re:

NH Electric Cooperative, Inc.

(See Attached Case List)

ORDER

The board has reviewed an “Assented-to Joint Motion to Reopen Record . . .” (“Motion”) filed by the municipalities in these appeals “for the sole” and “limited purpose” of submitting a recent “order” issued on May 12, 2015 by the Belknap County Superior Court in “NHEC v. Town of Gilmanton, Docket No. 11-CV-301.” The motion is denied for the following reasons.

The “Taxpayer,” while “assent[ing] to the submission of the Gilmanton decision [order],” notes that it is “not yet final and is subject to a motion for reconsideration and/or appeal to the New Hampshire Supreme Court”; the Taxpayer further states it “respectfully disagrees with the [superior court’s] analysis and does not believe that the [b]oard should give the decision [order] any weight in reaching its own decision which must be based on its own evaluation of the witnesses and other evidence and legal arguments presented. . . .” (See Motion, p. 3; emphasis added.)

The board finds no useful purpose would be served by reopening the record to allow submittal of an order issued later by another tribunal having concurrent jurisdiction to decide tax abatement appeals. (Cf. RSA 76:16-a and RSA 76:17.) While the Motion notes the same principal witnesses testified in the Gilmanton superior court trial (involving 2010, 2011 and 2012

tax abatement appeals), each tribunal has the responsibility for making its own independent determination regarding key evidentiary issues of credibility and weight to decide whether any specific challenged assessment is proportional or requires abatement; this determination should be based on the actual testimony and other evidence submitted in each proceeding, without any taint or appearance of outside influence such as might occur from submittal of an order reflecting the non-final conclusions of another fact-finder. The board held a consolidated hearing of appeals involving multiple municipalities, unlike the superior court trial which involved only the Town of Gilmanon, and has considered the consistency and credibility of multiple appraisals and other evidence presented in this light.

Weighing these concerns, the board does not agree submittal of a superior court order (issued well after the record was closed in both these distinct “NHEC Appeals” and the subsequent consolidated hearing of the “PSNH Appeals” involving another electric utility) -- one which the board can give “no weight” -- will be “pertinent to its own deliberations” (Motion, p. 2) or otherwise helpful to fulfill the board’s statutory responsibilities. The board finds the order in the superior court trial cannot be probative on the issue of whether the Taxpayer in these appeals (or the taxpayer in the PSNH Appeals, for that matter) has met its burden of proving disproportionality by a preponderance of the evidence actually presented (rather than in separate tax abatement appeals filed in another forum). Given the absence of any compelling rationale for granting the Motion, it is denied. (Cf. Tax 201.27(j) and (l); Tax 201.37(g); and Tax 201.41.)

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chairman

Albert F. Shamash, Member

Theresa M. Walker, Member

CERTIFICATION

NH ELECTRIC COOP CERTIFICATION FOR TAX YEAR 2011

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Margaret H. Nelson, Esq., Sulloway & Hollis, 9 Capitol Street, Concord, NH 03301, Taxpayer representative; Walter L. Mitchell, Esq. and Judith E. Whitelaw, Esq., Mitchell Municipal Group, P.A., 25 Beacon St. East, Laconia, NH 03246; Mr. George E. Sansoucy and Mr. Brian D. Fogg, George E. Sansoucy, PE, LLC, 89 Reed Road, Lancaster, NH 03584; Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258; and Brett S. Purvis & Associates, Inc., c/o Allison Purvis, 1195 Acton Ridge Road, Acton, ME 04001.

NH ELECTRIC COOP CERTIFICATION FOR TAX YEAR 2012

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Margaret H. Nelson, Esq., Sulloway & Hollis, 9 Capitol Street, Concord, NH 03301, Taxpayer representative; Walter L. Mitchell, Esq. and Judith E. Whitelaw, Esq., Mitchell Municipal Group, P.A., 25 Beacon St. East, Laconia, NH 03246; Mr. George E. Sansoucy and Mr. Brian D. Fogg, George E. Sansoucy, PE, LLC, 89 Reed Road, Lancaster, NH 03584; Justin L. Pasay, Esq., Donahue, Tucker & Ciandella, PLLC, 111 Maplewood Avenue - Suite D, Portsmouth, NH 03801; Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258; and Brett S. Purvis & Associates, Inc., c/o Allison Purvis, 1195 Acton Ridge Road, Acton, ME 04001.

Dated: 5/28/15

Anne M. Stelmach, Clerk