

In Re:
Public Service Company of New Hampshire d/b/a Eversource Energy
Master Docket No.: 28873-14-15-16-17PT

DECISION

This master docket consists of 138 individual RSA 76:16-a tax abatement appeals filed by the “Taxpayer”¹ challenging the proportionality of assessments (as detailed in Table 1) on the “Property” located in 47 “Municipalities” in four tax years (2014–2017). The Property consists of electric transmission and distribution (“T&D”) and other assets (including the Taxpayer’s use of public rights-of-way and its easements, fee simple land and “work center” improvements) in 46 of the Municipalities and one hydroelectric generation facility (the “Smith Hydro”) in the City of Berlin. To resolve these appeals, the board held a consolidated hearing, by agreement of the parties, on 12 days over four calendar weeks.

Outline of Contents:

- I. Arguments Presented
- II. Findings and Rulings
 - A. The Taxpayer and The Property
 - B. The Appraisals and Other Evidence Presented
 - C. Specific Proportionality Determinations
- III. Summary and Conclusions
- Table 1 – Quantitative Summary
- Table 2 – Findings in Each Appeal

I. Arguments Presented

The Taxpayer argued each of the assessments should be abated because:

(1) the best evidence of the market value of the T&D and other assets in each Municipality is the July 8, 2019 “Appraisal of Property . . .” (Taxpayer Exhibit No. 1, hereinafter the “Concentric Appraisal”)² prepared by Ann E. Bulkley, a certified general appraiser employed as Senior Vice President at Concentric Energy Advisors, Inc., which estimates market values below the equalized assessments;

(2) the best evidence of the market value of the Smith Hydro in Berlin is the August 5, 2019 “Appraisal of Property . . .” (Taxpayer Exhibit No. 3, hereinafter the “Concentric Smith Hydro Appraisal”) also prepared by Ms. Bulkley, which estimates a market value below the equalized assessment;

¹ The Taxpayer, frequently referenced in the record as “Eversource,” is a wholly owned subsidiary of Eversource Energy, a Fortune 500 company.

² This appraisal is an “Update” of one prepared in “November, 2018.” (See also Municipality Exhibit U.) Ms. Bulkley estimated the value of the Taxpayer’s property in a total of 106 municipalities on behalf of the Taxpayer. (*Id.*, p. 2.) As noted in the Taxpayer’s Post-Trial Memorandum (p. 1), “[p]rior to the [consolidated] hearing[], 162 appeals involving 60 other municipalities were settled,” leaving these 138 appeals to be decided by the board.

- (3) the appraisal evidence presented by the Municipalities is deficient for the reasons explained in the September 24, 2019 “Rebuttal Report” (Taxpayer Exhibit No. 4) prepared by Ms. Bulkley and her testimony and, in any event, this market value evidence itself is an indication of overassessment; and
- (4) each appeal should be granted with abatements ordered based on the market values estimated in the two Concentric appraisals adjusted by the level of assessment in each Municipality in each tax year.

The Municipalities argued none of the assessments should be abated because:

- (1) as detailed in their motions and arguments at the hearing, they are entitled to a directed verdict because the Concentric Appraisals are fatally flawed, the Taxpayer failed to satisfy its burden of proving disproportionality, and, consequently, the board should dismiss each appeal without consideration of the Municipalities’ own market value evidence;
- (2) in any event, and in the alternative, the board should find the assessments are generally supported by the estimates of the “Electric Transmission and Electric Distribution Property” in the July 8, 2019 “Consolidated Appraisal Report” (Municipality Exhibit DD, hereinafter the “GES Appraisal”) and the August 5, 2019 “Appraisal Report” (Municipality Exhibit CCC, hereinafter the “GES Smith Hydro Appraisal”) prepared by George E. Sansoucy and Brian D. Fogg, certified general appraisers at the firm of George E. Sansoucy, P.E., LLC, (“GES”) because these appraisals are the best evidence of market value;
- (3) in two of the Municipalities (Berlin and Dummer), the level of assessment used to determine proportionality in tax year 2017 should be the median ratio in tax year 2016 as calculated by the department of revenue administration; and
- (4) the Taxpayer did not meet its burden of proving disproportionality and each appeal should be denied.

Notwithstanding these conflicting arguments and critical points of disagreement, the parties, for a surprisingly protracted period of time, were unable to stipulate to the most fundamental information necessary to understand the context of each appeal: namely, the assessment under appeal and the level of assessment in each Municipality in each tax year.³ After the consolidated hearing, however, the parties, on December 23, 2019, filed Taxpayer Exhibit No. 43.

The information in this exhibit is presented in Table 1 to this Decision. Table 1 lists the appeals alphabetically by Municipality and tax year, calculates the equalized assessment (stipulated assessed value divided by level of assessment) and presents the Taxpayer’s and the Municipalities’ respective market value estimates. In Allenstown in tax year 2014, for example, the Taxpayer challenges the equalized assessment of \$4.3 million, contending the market value of the T&D assets was \$2.6 million, far less than the Municipality’s \$4.9 million estimate.⁴ Another example is Berlin in tax year 2017 where the Taxpayer challenges the \$58.7 million equalized

³ Cf. Transcript, Day 9, pp. 190-91 and Day 10, pp. 237-38.

⁴ These are rounded estimates.

assessment of the Smith Hydro, contending its market value was \$34 million, far less than either the equalized assessment or the Municipality's \$49 million market value estimate in Table 1.

II. Findings and Rulings

Before deciding which, if any, of these 138 appeals should be granted, the board carefully reviewed all of the evidence and arguments presented, including the exhibits (Taxpayer Exhibit Nos. 1-43 and Municipality Exhibits A-III), as well as the pleadings and a transcript of the hearing (Board Exhibit No. 1, consisting of almost 3,000 pages). While this record is quite voluminous, the following principal⁵ pleadings detail the parties' disputes:

the Taxpayer's Initial Trial Memorandum and the Municipalities' Prehearing Memorandum Re: Taxpayer's Burden of Proof and Proffered Evidence (hereinafter "Municipalities' Prehearing Memorandum"), both filed on November 4, 2019;

the Municipalities' Joint Motion for a Directed Verdict filed on November 15, 2019;
the Taxpayer's Objection to Municipalities' Joint Motion for a Directed Verdict filed on November 18, 2019 (the "November 18, 2019 Objection");

the Taxpayer's Post-Trial Memorandum and the Municipalities' Renewed Motion for Directed Verdict and Post-Trial Memorandum (hereinafter "Municipalities' Post-Trial Memorandum"), both filed on January 31, 2020;

the Taxpayer's Objection to Municipalities' Renewed Motion for a Directed Verdict filed on February 10, 2020 (the "February 10, 2020 Objection"); and

the Taxpayer's Reply Memorandum and the Municipalities' Reply Memorandum, both filed on February 21, 2020.

These pleadings cite and discuss a considerable body of decisions addressing the assessment of utility property. The more recent decisions of note include: Appeal of Public Service Company of New Hampshire, 170 N.H. 87 (2017), affirming In re: Public Service of New Hampshire, (July 2, 2015 Decision by the board in multiple tax year 2011 and 2012 dockets; hereinafter the "Prior BTLA Decision"⁶); Public Service Company of New Hampshire v. Town of Bow, 170 N.H. 539 (2018) (affirming superior court decision⁷); and Public Service Company of New Hampshire d/b/a Eversource Energy v. City of Portsmouth (May 20, 2019 Rockingham

⁵ In Section II.C of this Decision, the board will identify and address certain additional pleadings filed by the parties.

⁶ Since assessments occur annually, the Taxpayer is, of course, correct in stating: "The results of those appeals [in the Prior BTLA Decision] do not preclude the pursuit of these appeals for later tax years." (Taxpayer's Initial Trial Memorandum, p. 2.)

⁷ The "Sealed Order" dated October 7, 2016 issued by the Merrimack County Superior Court (copies attached as Exhibit 2 to the Taxpayer's Initial Trial Memorandum, Tab 17 in the Appendix to the Taxpayer's Post-Trial Memorandum and Schedule K to the Rebuttal Report).

County Superior Court Order⁸). These and other pertinent authorities addressing utility assessments are discussed in more detail below.

The parties do not dispute under New Hampshire law the Taxpayer has the burden of proving, by a preponderance of the evidence, the assessment on the Property in each Municipality in each tax year was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportional share of taxes. [See RSA 76:16-a⁹; Tax 201.27(f); Tax 203.09(a); and Appeal of City of Nashua, 138 N.H. 261, 265 (1994).] To establish disproportionality, the Taxpayer must show the assessment under appeal in each Municipality in each tax year was higher than its general level of assessment. (See, e.g., Taxpayer’s Initial Trial Memorandum, p. 2; and Municipalities’ Prehearing Memorandum, pp. 2-3).

As noted in the Prior BTLA Decision, pp. 12-14:

The supreme court has recognized, on more than one occasion, that “[t]here are five approaches to valuation potentially applicable to utility property, . . . [a]ll the approaches are valid, . . . [n]o factor has talismanic quality, . . . and many factors influence the determination of market value.” Public Serv. Co. v. Town of Ashland, 117 N.H. 635, 638-39 (1977) (internal quotations omitted). . . .

The recognized standard for obtaining a tax abatement in each municipality is a showing, by a preponderance of the evidence, that the Property “is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the town.” Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).” Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003) (Emphasis added). . . .

There is no dispute the Property is subject to property tax assessment at the municipal level as real estate based on its market value in each tax year. Market value is defined in RSA 75:1 as “the property’s true and full value. . . .” and “the selectmen” in each municipality have the statutory responsibility to appraise it. See also RSA 72:8 (Electric Plants and Pipe Lines), which provides:

All structures, machinery, dynamos, apparatus, poles, wires, fixtures of all kinds and descriptions . . . employed in the generation, production, supply, distribution, transmission, or transportation of electric power . . . shall be taxed as real estate in the town in which said property or any part of it is situated. . . .;

and RSA 72:9 (Where Taxable), which provides:

⁸ Copies attached as Exhibit 3 to the Taxpayer’s Initial Trial Memorandum, Tab 18 in the Appendix to the Taxpayer’s Post-Trial Memorandum and Schedule B to the Rebuttal Report.

⁹ Cf. the Taxpayer’s Initial Trial Memorandum, p. 2, ¶3 (incorrectly referencing RSA 76:17 rather than RSA 76:16-a).

If the property described in RSA 72:8...shall be situated in or extend into more than one town, the property shall be taxed in each town according to the value of that part lying within its limits.

. . . A municipality is obligated to abate a local property tax “for good cause shown,” RSA 76:16, and, if a tax abatement appeal is filed with either the board or the superior court, that tribunal is authorized to “make such order thereon as justice requires.” RSA 76:16-a; and RSA 76:17.

The board considers and weighs all of the evidence presented, 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”).

Where there is conflicting evidence, the board must determine for itself the weight to be given each piece of evidence. As the supreme court has noted, “[g]iven all the imponderables in the valuation process” for public utility property, “[j]udgment 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). Judgment is essential because, as the supreme court has repeatedly recognized in considering the relative strengths of the various approaches to valuing utility property, “all also have weaknesses.” (See PSNH v. Bow, 139 N.H. 105, 107 (1994), quoting from Ashland, 117 N.H. at 638.)

The supreme court further recognized that, because of the “unlikelihood of sale” of utility property, “this court has traditionally given the trier of fact considerable deference in this area.” Southern N.H. Water Co. v. Hudson, 139 N.H. 139, 142 (1994), citing Ashland, 117 N.H. at 638, 639 and Public Service Co. v. New Hampton, 101 N.H. 142, 144, 146 (1957). Further, “[w]hen faced with conflicting [expert] testimony, a trier of fact is free to accept or reject an expert’s testimony in whole or in part [citation omitted.] . . . [and can] credit the opinion of one expert over the opinions of other experts.” LLK Trust v. Town of Wolfeboro, 159 N.H. 734, 740 (2010).

Cf., Appeal of Public Service Company of New Hampshire, 170 N.H. at 91-95 (affirming Prior BTLA Decision).

A. The Taxpayer and the Property

The Taxpayer is one of nine electric distribution providers in New Hampshire. (GES Appraisal, vol. 1, pp. 78-79), also owns electric transmission assets, and is subject to state and federal regulation by the New Hampshire Public Utilities Commission (“PUC”) and the Federal Energy Regulatory Commission (“FERC”). The Taxpayer’s distribution and transmission assets are regulated primarily by the PUC and FERC, respectively. (Cf. Municipalities’ Post-Trial Memorandum, pp. 8-12.)

As noted in the Prior BTLA Decision, pp. 10-11:

[T]he Taxpayer is a for profit corporation and is the only vertically integrated utility in New Hampshire providing electricity “generation”, “transmission” and “distribution” services in some 210 “communities.” . . . and is New Hampshire’s largest electric utility, serving 490,000 homes and businesses, with rates regulated by the PUC. . . .

The Taxpayer has “exclusive franchises” granted by the PUC to “distribute electricity in the respective areas in which it is now supplying such service” and these exclusive franchises also give the Taxpayer:

[The] rights and powers to manufacture, generate, purchase, and transmit electricity, to sell electricity at wholesale to other utility companies and Municipalities and to erect and maintain certain facilities on certain public highways and grounds, all subject to such consents and approvals of public authority and others as may be required by law. . . .

These exclusive franchises . . . result in what the Taxpayer acknowledges are “quasi-monopolies.”¹⁰

A map showing the Municipalities where the Taxpayer provides electricity is contained in Schedule C to the Concentric Appraisal. A description of the T&D assets is contained in the Concentric Appraisal, pp. 6-7, 26 and fns. 27 and 28. As shown in Schedule D to that appraisal, the Taxpayer owns T&D assets in most, but not all, of the towns and cities in the State.

The parties appear to agree the highest and best use of the T&D assets is “their current use as segments of larger distribution and transmission networks.” (See Taxpayer’s Post-Trial Memorandum, p. 8, citing pages from the Transcript.) The Taxpayer further states “the probable purchaser of these assets would be a regulated investor owned utility” and that any such purchase would require “regulatory approval.” (Id.)

The Taxpayer’s appraiser, Ms. Bulkley, relied on the “accounting records” supplied to her for “the tangible real transmission and distribution property . . . in service as at the end of the calendar years, all applicable general plant related to the T&D assets, and all construction work in process (‘CWIP’) related to the T&D assets that had not been completed and placed in service as of those dates.” (Concentric Appraisal, p. 26.) Ms. Bulkley testified that, in addition to CWIP, the accounting records for the T&D assets given to her by the Taxpayer also included a 20% depreciation floor and added in “CIAC” (contributions in aid of construction received from the Taxpayer’s customers). (Id., fns. 27 and 28; see also Transcript, Day 3, p. 165.)

¹⁰ The supreme court has long recognized that all relevant factors must be considered in the valuation of utility property for tax purposes, including “whether the owner has a lawful monopoly.” Public Service Company of New Hampshire v. Town of New Hampton, 101 N.H. 142, 146 (1957). In addition, the utility property “value may be enhanced” where the property located within a Municipality “is and may be used as an integral part of an entire system.” Id.

The data replicated in Schedule F to the Concentric Appraisal is “[i]llustrative” of the accounting records she obtained from the Taxpayer and used for the T&D assets in one Municipality (Allenstown). Ms. Bulkley made the assumption the market values of the Taxpayer’s land and work center improvements were reasonably approximated by their assessments in each Municipality in each tax year (unadjusted by the respective levels of assessment), rather than the values in the Taxpayer’s accounting records or her own estimates of value. She developed her own methodology, however, for valuing the Taxpayer’s “Occupation and Use of the Public Rights-of-Way and Easements.” (See Concentric Appraisal, pp. 49-56.)

The Smith Hydro is described as “a run-of-river hydroelectric generating station comprised of a single generating unit” and “consists of a dam, power canal, penstock and surge tank conveying water from the dam reservoir to the power house” with actual power generation dependent on “seasonal weather and rainfall patterns affecting the Androscoggin River.” (Concentric Smith Hydro Appraisal, pp. 6-7.) The Smith Hydro is one of four hydroelectric facilities in Berlin and there are three other such facilities in nearby Gorham. (Municipalities’ Post-Trial Memorandum, p. 13.) It was constructed in 1948 and “substantial capital expenditures and capital improvements” were made in 2006 (runner replacement), 2011 (switchgear control replacement) and 2014 (generator overhaul). (*Id.*, p. 14, citing Municipality Exhibit CCC, p. 14.) The 2006 runner replacement, in particular, increased efficiency and also added 8% in annual energy generation, increasing nameplate capacity from 15 MW to 17.6 MW. (*Id.*)

The parties appear to agree “Smith Hydro’s highest and best use was as a merchant generating plant operating in the deregulated . . . marketplace.” (See Taxpayer’s Post-Trial Memorandum, p. 4.) The Smith Hydro was sold by the Taxpayer in January, 2018 (ten months after the tax year 2017 assessment date) as part of the divestiture of the Taxpayer’s generating plants in a “process established and controlled by the NHPUC.” (*Id.*, p. 76, fn.17.)¹¹

B. The Appraisals and Other Evidence Presented

The resolution of these appeals is, of course, heavily dependent on the credibility of the appraisals, expert testimony and other evidence presented. The credibility factor is especially important given the wide divergence in the experts’ respective market value estimates in Table 1. In the aggregate for these 138 appeals, the estimates in the Concentric appraisals submitted by the Taxpayer total approximately \$1.269 billion, about 35% less than the total of the GES estimates (\$1.95 billion) prepared for the Municipalities.

The Taxpayer relied upon the Concentric appraisals to meet its burden of proving the disproportionality of each assessment and the testimony of three witnesses (Ann E. Bulkley,

¹¹ As part of that process, the Taxpayer stipulated “it would not rely upon or utilize the sales price paid for the hydro facilities in any tax abatement proceeding.” (*Id.*) Consequently, there was no evidence presented regarding the consideration received by the Taxpayer when it sold the Smith Hydro just ten months after the assessment date.

John J. Reed and Lisa Cooper). The Municipalities challenged the Taxpayer's market value evidence on many fronts and relied on the GES appraisals and the testimony of two witnesses (George E. Sansoucy and Brian D. Fogg.)

As noted above, Ms. Bulkley is a certified general appraiser employed by Concentric Energy Advisors and prepared the two Concentric appraisals and the Rebuttal Report (Taxpayer Exhibit Nos. 1, 3 and 4). Her academic background and areas of expertise are detailed in Appendix 1 to each of the Concentric appraisals and she was qualified as an expert in utility valuation.

For the T&D assets, Ms. Bulkley testified she considered all three approaches to value, concluded the market data referenced in her appraisal did not allow her to reach a "reasonable" value conclusion using the sales comparison approach and therefore only applied the income and cost approaches to develop her market value estimates. She believed both the income and cost approaches are "primary indicator[s]" for the values she estimated and the sales comparison approach was too "imprecise for determining" those values. (Concentric Appraisal, p. 56.) Figure 8 in her appraisal (*id.*, pp. 57-59) summarizes her 'reconciled' market values for each Municipality for each tax year. For the Smith Hydro, Ms. Bulkley similarly considered all three approaches to value but again believed the sales comparison approach involved factors too "imprecise to determine value." (Concentric Smith Hydro Appraisal, p. 52.)

The Taxpayer's other two witnesses were Mr. Reed and Ms. Cooper. Mr. Reed is the Chairman and Chief Executive Officer of Concentric Energy Advisors and testified regarding his background and experience in electric utility valuation as documented in Taxpayer Exhibit No. 2 (the "Expert Report of John J. Reed"). Ms. Cooper testified she is the "vice president of transmission rates and regulatory requirements for Eversource Energy Service Company," an affiliate of the Taxpayer. (Transcript, Day 1, p. 45.)

The Municipalities focused their primary arguments on the sufficiency of the evidence presented by the Taxpayer, contending the Taxpayer failed to meet its burden of proof and therefore each appeal should be dismissed by directed verdict without any consideration of their own market value evidence. After the board denied this motion, the Municipalities presented the GES appraisals, as well as the testimony of Mr. Sansoucy and Mr. Fogg, to support the proportionality of the assessments. Both are certified general appraisers and assessing supervisors employed by GES with decades of experience in valuing utility properties and are qualified experts in utility valuation. GES also served as the assessing contractor for many of the Municipalities and, in that capacity, recommended many of the assessments under appeal for adoption by the Municipalities.

The final market values estimated by Mr. Sansoucy and Mr. Fogg for the T&D assets using the cost, income and sales comparison approaches are in the GES Appraisal: see Municipality Exhibit EE, pp. 262-73 (revising Municipality Exhibit DD, pp. 262-73). Their market value estimate for the Smith Hydro, also using the cost, income and sales comparison approaches, is in Municipality Exhibit CCC (see pp. 2-13).

C. Specific Proportionality Determinations

To help achieve clarity, the board will present its specific findings and rulings in separate sections, discussing why:

1. the Municipalities' directed verdict motions are without merit;
2. the arguments of Berlin and Dummer that the tax year 2016 levels of assessment (median ratios) should be applied to the tax year 2017 appeals are without merit;
3. abatements should be granted for certain of the T&D appeals and the Smith Hydro appeal based upon the Municipalities' own market value estimates; and
4. the Taxpayer did not satisfy its burden of proving disproportionality for the remainder of the appeals.

1. Denial of the Municipalities' Directed Verdict Motions

As noted above, the Municipalities presented repeated motions for a directed verdict in all 138 appeals. These motions are without merit for the reasons summarized below.

The first "Joint Motion for Directed Verdict" was filed on November 15, 2019 (at the end of the second week of the consolidated hearing and before the Municipalities presented their own testimony and documentary exhibits in defense of the assessments). The board considered all of the arguments presented, both by the Municipalities and the Taxpayer (including its "Objection" filed on November 18, 2019), and denied the motion for the reasons stated in its November 19, 2019 Order.

The second, 'renewed motion for directed verdict' filed by the Municipalities as part of their January 31, 2020 Post-Trial Memorandum (and stated in the "alternative" to their more detailed arguments for dismissal) is also without merit for the reasons stated here and in the Taxpayer's February 10, 2020 Objection. Briefly, as the board has ruled in prior decisions, the standard for granting a directed verdict is recognizably high. (See the authorities cited and discussed by the Taxpayer in the November 18, 2019 Objection, pp. 4-6, and Attachment 1, the board's May 19, 2015 Order Denying [the Municipalities'] Directed Verdict Motion in the prior tax year 2011 and 2012 appeals.¹²) The board finds merit in the Taxpayer's arguments that the authorities cited by the Municipalities are distinguishable and not persuasive.

The Taxpayer presented considerable testimony, along with two appraisals and many other exhibits, to support its arguments regarding the disproportionality of each assessment. The direct and cross-examination of the Taxpayer's appraiser (Ms. Bulkley) consumed multiple days. (See Transcript, Days 2-6 and 11-12.) To say the least, the market value evidence presented by the parties to determine disproportionality was "conflicting" and the board finds the "no rational juror" standard recognized by the Municipalities in their Joint Motion for Directed Verdict (p. 4)

¹² In those appeals, the Municipalities did not file a rehearing motion and did not cross-appeal the board's denial of their directed verdict motion.

has not been satisfied. Cf. Public Service Co. of New Hampshire v. Town of Bow, 170 N.H. at 542-43:

The determination of fair market value is a question of fact. . . . It is extraordinarily difficult to value public utilities, and we give the trier of fact considerable deference in this area. . . .

As we have repeatedly stated, the trier of fact may use any one or a combination of five appraisal techniques in valuing public utility property: original cost less depreciation (rate base or net book), comparable sales, cost of alternative facilities, capitalized earnings, and reproduction cost less depreciation. . . .

The town essentially faults the trial court because it found [another expert's] valuations more credible than Sansoucy's. "Credibility, of course, is for the trial judge to determine as a matter of fact and if the findings could reasonably be made on all the evidence they must stand." . . . We find no reason to disturb the court's assessment.

Moreover, although [the expert] valuations differed . . ., "conflicts in the evidence were to be resolved by the trial judge, who could accept or reject such portions of the evidence presented as he found proper, including that of the expert witnesses." . . . As the fact finder, it was proper for the trial court to weigh the conflicting expert testimony. . . .

To the extent that the town argues that we have previously rejected the net book value approach in valuation of utilities, we disagree. We have never held that a single valuation approach or specific combination of approaches is correct as a matter of law. Appeal of Pub. Serv. Co. of N.H., 170 N.H. 87, 97, 165 A.3d 695 (2017). To the contrary, the credibility of an appraisal is a question of fact that the trial court must decide based upon the evidence presented in a given case. Id. This is why the trier of fact is given considerable deference regarding determinations of fair market value and "need not allocate specific weight to any one of the approaches listed." Appeal of N.H. Elec. Coop., 170 N.H. 66, 76, 164 A.3d 1013 (2017) (quotation omitted). The fact that we have upheld a trier of fact's rejection of the original cost less depreciation, i.e., net book, appraisal technique in a different case, based upon different appraisals, and supported by different testimony, has no bearing upon whether the trial court could properly rely upon that technique in valuing the transmission and distribution network in this case. See Appeal of Pub. Serv. Co. of N.H., 170 N.H. at 97, 165 A.3d 695. As we have stated, "judgment is the touchstone."

(Certain citations quotations, ellipsis and brackets omitted.)

Even if a trier of fact finds the evidence presented by a taxpayer is not sufficient to meet its burden of proof, the outcome should be dismissal on the merits of the tax abatement appeal rather than the grant of a directed verdict. Cf. EIP Northeastern Boulevard, LLC v. Town of Salem, BTLA Docket No. 27682-14PT, cited and discussed by the Taxpayer as follows: "consistent with the tax assessment system's goals of remedial justice, the [b]oard concluded [in EIP, p. 3] that it should consider all relevant evidence, including 'the Town's evidence as well as any rebuttal

evidence from the Taxpayer regarding the proportionality of the assessments.” (February 10, 2020 Objection, p. 2.) The board finds granting a directed verdict motion in these appeals would defeat, rather than uphold, the goal of remedial justice.

2. Proportionality Requires Application of the Median Ratio in Each Tax Year (Not the Prior Tax Year)

All parties agree the median ratio for each Municipality should be used to determine the level of assessment. All, except for Berlin and Dummer, do not dispute the proper ratio is the ratio calculated for the tax year under appeal. For tax year 2017, however, Berlin and Dummer argue the ratio for tax year 2016 should be used. On the seventh day of the hearing, the board ruled against Berlin and Dummer on this issue and stated its reasons for doing so on the record. (See Transcript, Day 7, pp. 7-8.)

The board considered all of the arguments presented at the hearing, as well as those stated in the Municipalities’ Post-Trial Memorandum, pp. 135-37, and Reply Memorandum, pp. 18–19, and made this ruling for the reasons presented by the Taxpayer at the hearing and in its Post-Trial Memorandum, pp. 92-93, and Reply Memorandum, p. 19.¹³ In support, the Taxpayer correctly cites the following supreme court and board decisions which the board finds are dispositive: Appeal of City of Nashua, 138 N.H. 261, 266-67 (1994); Appeal of Andrews, 136 N.H. 61, 65 (1992); and North Country Environmental Services, Inc. v. Town of Bethlehem, BTLA Docket No. 19709-02 PT, et al. (May 7, 2007 Decision) at pp. 24-27.

In North Country, the “Town” (Bethlehem) made essentially the same argument as Berlin and Dummer for use of the prior tax year median ratio, causing the board to respond as follows:

The Town argued it was appropriate to apply the prior year’s equalization ratio to its market value determination as that was the ratio known at the time of the assessment. (The Town appears to have followed this approach for tax years 2002 and 2003, but not 2004, when it used the current year ratio.) The Taxpayer argued use of prior year ratios results in disproportionate assessment.

The board finds the Taxpayer’s position is supported by well-settled case law: see Stevens v. City of Lebanon, 122 N.H. 29, 33-34 (1982) (once the municipality chooses to employ an equalization ratio determined by the DRA, the municipality is obligated to use the proper current equalization ratio, not a prior year’s equalization ratio.); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985) (taxpayers can carry their burden of proving disproportionality if they establish that their property is being assessed at a higher percentage of market value than the percentage at which all other property in town is being assessed); Appeal of Town of Seabrook, 133 N.H. 365, 374-375 (1990) (the ratio of a property’s assessed value relative to market value can be no higher than the ratio of all other property’s relative assessed value throughout the municipality); Appeal of Andrews, 136 N.H. 61 (1992) (New Hampshire

¹³ On page 19 of its Reply Memorandum, the Taxpayer makes a further argument that Dummer waived this argument by stipulating to the tax year 2017 median ratio as the level of assessment in Taxpayer Exhibit No. 43, a technical argument mooted by the board’s ruling.

Constitution requires all taxpayers within a taxing jurisdiction be assessed at the same proportion to market value and thus the use of two ratios is prohibited); and Appeal of City of Nashua, 138 N.H. 261, 266 (1994) (“in the event of a disparity, the board, in its role as finder of fact, RSA 76:16-a, V (1991), shall determine the equalization ratio most reasonably representative of the general level of assessment.”) . . .

Here, the best evidence of the level of assessment for each year is the ratio for each year ultimately determined by the DRA. To conclude otherwise would result in properties in Town being disproportionately assessed at two different levels of assessment as prohibited by Part 2, Article 5 of the New Hampshire Constitution. . . .

RSA 76:16 provides, “anyone aggrieved by an assessment of the tax may appeal.” Inherent in the assessment of a tax is both a market value determination and a level of assessment determination; said another way, any appeal inherently encompasses both the market value and level of assessment components which need to be addressed to jointly ascertain proportionality. . . .

Id. Similar reasoning makes the contrary arguments of Berlin and Dummer without merit.¹⁴ For these two Municipalities, quantitative motivations for wanting to apply a prior tax year median ratio are clear.¹⁵ Such motivations cannot, however, prevail or override established law.¹⁶

3. Grant of Certain Appeals Where Abatements are Warranted

Based on its rulings in Subsections 1 and 2 above and the authorities cited, the board finds it is both reasonable and proper to decide these appeals based on the totality of the evidence

¹⁴ The board is not persuaded by the contention in the Municipalities’ Post-Trial Memorandum (see p. 136) that Mr. Sansoucy’s testimony supports a finding that the Berlin used the “same process” of applying the tax year 2016 median ratio to the market value of “all properties” assessed in tax year 2017. After his direct examination, Mr. Sansoucy clarified his testimony to state this process was applied only to “those properties that have improvements,” not all properties. (Cf. Transcript, Day 11, pp. 97-98.) The board takes further note of the fact that in both the recent Bow and Portsmouth superior court decisions, the median ratio for the tax year under appeal (not the prior year ratio) was applied, apparently without challenge, as the level of assessment in the municipality. (See, e.g., Exhibits 2 and 3 to the Taxpayer’s Initial Trial Memorandum.)

In addition, to the extent Berlin and Dummer argue the Taxpayer was legally required to put on evidence to disprove their own contention in these appeals that use of a prior year median ratio is more representative of the current year level of assessment, this argument borders on sophistry. It is one thing to question what statistic best measures the level of assessment (median ratio or weighted mean, for example), but quite another to require a party to prove what should be obvious (i.e., that a current year statistic is more valid than a prior year statistic). [Cf. Como v. Town of Sharon, BTLA Docket No. 24028-08PT (September 3, 2010), pp. 4-7.]

¹⁵ In Berlin, the median ratio changed from 110.7% in 2016 to 96.2% in 2017. (Cf. Taxpayer’s Post-Trial Memorandum, p. 92.) Since the assessment under appeal for the Smith Hydro in 2017 is \$56.5 million, rounded, the equalized assessments (market value indications) are approximately \$51 million, if the 2016 ratio is applied, and \$58.7 million, if the 2017 ratio is applied -- a \$7.7 million difference. In Dummer, the median ratio changed from 112.5% in 2016 to 106.3% in 2017 and application of the 2016 ratio would result in a difference of approximately \$746,000.

¹⁶ Cf. Aubertin v. Town of Pittsfield, BTLA Docket No. 26675-12PT (November 20, 2014 Order), p. 2: “It is well established that a taxpayer has the “right [] to have his property assessed upon the same standard of value [as] that applied in the assessment of other property” in the Town, not by a different standard. Ainsworth v. City of Claremont, 106 N.H. 85 (1964), citing Rollins v. City of Dover, 93 N.H. 448, 450 (1945).”

submitted, including the Municipalities' own market value estimates, and to apply the median ratio in each tax year to determine the proportionality of each assessment. For the reasons stated in the next section, however, the board is not persuaded the Concentric appraisals present the most reasonable or credible estimates of market value. Nonetheless, as the Taxpayer correctly points out, the GES appraisals support the granting of "assessment reductions and refunds" for many communities and many tax years. (See Taxpayer's Initial Trial Memorandum, p. 11; and Taxpayer's Post-Trial Memorandum, pp. 3 and 73 at fn. 16.)

While it is true assessments generally have a 'presumption of validity' (cf. Municipalities' Post-Trial Memorandum, p. 16), it is also true the assessors in each Municipality have an overriding obligation, reflected in the New Hampshire Constitution and statutes, to insure that each taxpayer's property is fairly and equitably assessed on the basis of all available information. See, generally, EIP Northern Boulevard, LLC v. Town of Salem, BTLA Docket No. 27682-14, et al. (February 24, 2017 Order at p. 6, fns. 8 and 9), citing New Hampshire Constitution, Pt. II, Art. 5 (mandating governmental obligation to "impose and levy proportional and reasonable assessments . . . upon all estates").

In addition, as noted in EIP (id.):

RSA 74: 1 (Annual List) and RSA 75:1 (How Appraised) establish a statutory obligation for the selectmen in each town to assess "taxable property at its market value" and to certify these values to the department of revenue administration ("DRA"). See Town of Hudson v. State Department of Revenue Administration, 118 N.H. 19, 21-22 (1978); accord, Winchester Taxpayer's Assn. v. Board of Selectmen, 118 N.H. 144, 148 (1978). RSA 75:8 (Revised Inventory) further obligates the selectmen annually to "adjust assessments to reflect changes so that all assessments are reasonably proportional within that municipality."

See also Jerome C. Artigliere Revocable Trust v. Town of Kensington, BTLA Docket No. 25681-10PT (November 21, 2012 Order), pp. 2-3 (notwithstanding any "presumption of validity," in a tax appeal the board can weigh probative value of "any analysis or appraisal prepared in defense of the proportionality of the assessment on a specific property" and "the board has a duty to evaluate the probative value of any such market value evidence whether submitted on behalf of the Taxpayer or the Town").

When municipal assessors and/or assessing contractors discover property has been overassessed based on subsequent information (such as the preparation of the GES appraisals in these appeals), subject to a test of materiality and reasonableness, of course, these constitutional and statutory obligations, along with corresponding professional standards, require them to abate the assessment in question. (Cf. Taxpayer's Post-Trial Memorandum, p. 73, fn. 16, citing several professional standards that help "ensure fair and proportional assessments" for each taxpayer.) To decline to do so is a dereliction of that governmental obligation and professional responsibility.¹⁷

¹⁷ Cf. Municipalities' Prehearing Memorandum, p. 2, citing and quoting Signal Aviation Services v. City of Lebanon, 164 N.H. 578, 583 (2013) (internal quotation marks and citation omitted): "The issue in an abatement proceeding . . . is whether the government has taxed the plaintiff out of proportion to other property owners in the taxing district."

This obligation and responsibility applies to the assessment of the T&D assets in each Municipality and the Smith Hydro in Berlin, discussed in more detail below. Table 2 of this Decision calculates the extent of overassessment or underassessment by comparing the assessment to the market value estimate in the GES appraisals adjusted by the level of assessment. In many instances, this comparison indicates overassessment, ranging in magnitude from 0.07% (in Deerfield in tax year 2016) to 40.28% (in Errol in tax year 2014). In other instances, this comparison indicates underassessment, rather than overassessment, (as in Allenstown in tax years 2014 and 2016 and East Kingston in tax years 2014, 2015 and 2016, to cite five examples).

As in the Prior BTLA Decision (see p. 10, fn. 6), however, the board finds: There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the municipality's general level of assessment, represents a reasonable measure of one's tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979). The board has followed this principle in prior decisions: see, e.g., Jebb Road Real Estate Trust v. Merrimack, BTLA Docket No. 26521-11PT (October 3, 2014), p. 5; and Pioneer NH, LLC v. Portsmouth, BTLA Docket No. 25908-10PT (January 9, 2013), pp. 4-5.

Using its judgment and experience, the board finds a range of estimated market value within five percent of the equalized assessment is reasonable in these appeals.¹⁸ Therefore, the board grants the appeals where the degree of overassessment exceeds five percent – a total of 91 of the 138 appeals. For those 91 appeals, Table 2 details the abated assessments by adjusting the “Municipality Market Value Estimate” (estimated in the GES appraisals) by the level of assessment (see Table 1). The remaining 47 appeals are denied because, as shown in Table 2, there is either a difference of less than five percent in the overassessment or an underassessment.

In the remainder of this section, the board will briefly discuss its specific findings regarding the conflicting market value estimates for the Smith Hydro in tax year 2017 detailed in Table 1. Largely for the reasons stated in the Municipalities' Post-Trial Memorandum (see pp. 119 -134), the board finds the Taxpayer did not meet its burden of proving the market value of the Smith Hydro was \$34 million, \$15 million less than the \$49 million value estimated by Berlin.¹⁹

Further, at the hearing of these appeals one of the Municipalities' attorneys told the board: “you are a court of equity. You are here to do what's fair. You are here to do what's right. . . .” (Transcript, Day 1, p. 39.)

¹⁸ This is consistent with the board's findings in the Prior BTLA Decision at p. 9 and In re: New Hampshire Electric Cooperative (July 2, 2015 Decision in multiple tax year 2011 and 2012 dockets) at p. 7. See also Appeal of Public Service Company of New Hampshire, 170 N.H. at 92 (recognizing board's application of a materiality standard to overassessments).

¹⁹ Additional support for this conclusion is contained in the prior valuation studies described in the Concentric Smith Hydro Appraisal, pp. 9-10, prepared in prior PUC proceedings. In Ms. Bulkley's own words, these studies, completed in 2013 and 2014, indicate “the value of PSNH's hydroelectric generation [assets] was far above their net book value” and the Smith Hydro, according to the 2014 study, “had a value of approximately \$46 million in the reference case based on a DCF analysis, and ranged in value from approximately \$35 million (low gas cost scenario) to \$58 million (high gas cost scenario) . . .”

The board's major points of disagreement with the Concentric Smith Hydro Appraisal include questions regarding the reasonableness of its assumption that the benchmark for estimating value using a cost approach should be a natural gas (fossil fuel) facility with additional fuel cost [to replace a hydro-generation (renewable energy) plant with zero fuel cost] and the decision to rely upon on a single valuation approach [income, using a discounted cash flow ("DCF") analysis] rather than multiple approaches. The board also noted Berlin's expert valued the Smith Hydro using the same methodology as other hydroelectric facilities, including others owned by the Taxpayer.²⁰ (Cf. Municipalities' Post-Trial Memorandum, pp. 119-20; and Taxpayer's Reply Memorandum, pp. 17-18.)

After evaluating the respective strengths and weaknesses of each appraisal, the board finds the three methods of valuing the Smith Hydro employed by GES result in a valuation that is more credible and better supported by the record as a whole and the Taxpayer did not meet its burden of proving otherwise. (See also Municipalities' Post-Trial Memorandum, pp. 119-35; and Municipalities' Reply Memorandum, pp. 16-18.) As detailed in Table 2, application of the \$49 million market value estimate in the GES Smith Hydro Appraisal, adjusted by the level of assessment in tax year 2017, results in an abated assessment of \$47.138 million, well below the assessed value (approximately \$58.745 million).

4. Denial of Remainder of T&D Asset Appeals

The board is unpersuaded by the Taxpayer's arguments which ask the board to find the Concentric Appraisal contains the most credible indications of market value for the T&D assets and therefore should be the basis for ordering abatements and granting the appeals. Discussed below are the main deficiencies in these arguments and why they result in findings the Taxpayer failed to meet its burden of proving disproportionality through this appraisal.

To begin with, the board finds substantial merit in the Municipalities' arguments that Ms. Bulkley's methodology for valuing the T&D assets is "a circular exercise" and an arithmetical "tautology" in several respects, leading to a "conclusion" that their value "is limited to the net book value figure Eversource provided to Ms. Bulkley." (Cf. Municipalities' Prehearing Memorandum, p. 7; and Municipalities' Post-Trial Memorandum, p. 5.) This is largely self-evident from Schedule T to the Concentric Appraisal (Taxpayer Exhibit No. 1), where Ms. Bulkley presents her "Concluded Fair Market Value" estimates for each Municipality and tax year. These numbers supposedly reflect use of both an income and a cost approach (to value the T&D assets before adding in the "Land Value" and "Workcenter" values, if any, in each Municipality)

While Smith Hydro was owned by the Taxpayer, a regulated utility, in tax year 2017, both the Concentric and GES appraisals value the Smith Hydro "as a merchant generator not subject to cost regulation." (See Municipalities Post-Trial Memorandum, p. 6.)

²⁰ In New Hampshire, a valuation method applied in a uniform and consistent manner is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982); accord, Fournier v. Town of Gorham, BTLA Docket No. 26705-12PT (April 17, 2015), p. 3.

along with her separate estimates of the value of the “Easements & Rights-of-Way.” In each instance, her value estimates are identical [compare columns (b) and (d) and columns (c) and (e)].

This arithmetic outcome occurs simply because Ms. Bulkley’s belief that all of the difference between her estimates of value using the income approach and her replacement cost less physical depreciation calculation in her cost approach is attributable to economic obsolescence. (See Concentric Appraisal, p. 40, and Schedule Q.) Thus, her methodology amounts, at best, to use of a single approach (the income approach) to estimate value.²¹ The board does not agree with the Taxpayer’s arguments that this is a reasonable or credible method for determining economic obsolescence. (Cf. Taxpayer’s Post-Trial Memorandum, pp. 46-48.)

As noted by the Municipalities, the flaws in Ms. Bulkley’s approach in valuing the T&D assets is readily apparent in the Allenstown “Illustrative” example in Schedule F of the Concentric Appraisal, an example also extensively discussed at the hearing in her cross-examination. (See Concentric Appraisal, p. 22; and Transcript, Day 3, pp. 135-165.) In Schedule F, Ms. Bulkley added up the Taxpayer’s accounting record values in tax year 2014 for “Transmission” (\$754,708) and “Distribution” (\$1,602,170). In Schedules H and I, she then used these same values [incorrectly captioned as “Original Cost New Less Book Depreciation”] to compute a “Total Return” [(column (g) -- based on estimated equity and debt return rates and the Taxpayer’s capitalization structure] which she then capitalized (using the same capitalization rate). For tax year 2014 in Allenstown, her “Total Return” calculation for “Transmission” was \$54,599 capitalized to a value of \$754,708 (using her 7.23% capitalization rate) and her Total Return calculation for “Distribution” was \$104,491 capitalized to a value of \$1,602,170 (using her 6.52% capitalization rate).

If, in fact, the Taxpayer’s accounting records reflected higher values (say \$1.5 million rather than \$754,708 for the Transmission assets in Allenstown in 2014, for example), the tautology in Ms. Bulkley’s income approach would have led to a calculation of \$1.5 million as the “taxable” value of those assets. Similarly, as pointed out by the Municipalities at the hearing and in their Post-Trial Memorandum (pp. 30-33), a change in Ms. Bulkley’s capitalization rate (the weighted average cost of capital or “WACC”) would not change her resulting calculation of market value. (See also Municipality Exhibit J.) Neither would any change in the Taxpayer’s debt/equity ratio, one basic determinant in her WACC calculations.

²¹ Ms. Bulkley provided no explanation as to why, as noted in the Municipalities’ Post-Trial Memorandum (p. 24), her economic obsolescence estimates were in “a range of approximately 20% to almost 80% depending on the municipality.” (See also Transcript, Day 4, pp. 79-81.) The board finds one weakness in the Taxpayer’s evidence is the absence of a satisfactory explanation for this degree of variation. In her appraisal (see p. 39), Ms. Bulkley states her belief that economic obsolescence is “almost always incurable” and “depend[ent] on . . . external factors . . . largely related to regulation” in “the case of electric transmission and distribution assets.” If these assertions are true, one would expect her estimates to be more consistent and less variable for very similar assets located in different Municipalities. There is therefore reason to question the credibility of her economic obsolescence estimates; as noted in the Municipalities’ Post-Trial Memorandum (p. 24), they result simply from an arithmetic calculation which “always reduc[e] her reproduction cost approach to value to precisely the same net book value figure provided to her by Eversource.”

Another way to understand this circularity is to deconstruct the formula Ms. Bulkley applied in the Concentric Appraisal (see p. 25) to “estimate the value of the assets”: this formula is “Value = Annual Return / Capitalization Rate.” What this formulation omits to mention is that the “Annual Return” Ms. Bulkley calculates in her appraisal is nothing more than a multiplication of the same “Value” number times the “Capitalization Rate.” Thus, when “Annual Return” is replaced in her formula by Value x Capitalization Rate, the formula reduces to ‘Value = Value’ (which results after the Capitalization Rate in both the numerator and denominator are canceled, an application of basic algebra).

The Municipalities are correct in criticizing the Concentric Appraisal for estimating market values equal to, actually identical to, what can be called the modified net book value (“MNBV”) of the Taxpayer’s T&D assets presented to Ms. Bulkley by the Taxpayer in its “accounting records.” The net book value (“NBV”) of these assets was augmented by a 20% “floor” on depreciation and the inclusion of CWIP and CIAC amounts (mentioned above), which, all other things being equal, resulted in a MNBV higher than the NBV used for rate-making purposes.

The Municipalities emphasize the many problems associated with use of the NBV approach (or the MNBV variation, for that matter) to estimate the market value of utility property and how these problems have been recognized by the courts and the board. (See, e.g., their Post-Trial Memorandum, pp. 17-19.²²) Cf. Northern Utilities, Inc. v. Towns of Durham, Salem and Seabrook, BTLA Docket No. 22828-15PT, et al. (May 17, 2019), p. 14 (where the board rejected expert testimony to the effect that the assets of a regulated utility “should sell [for] near book value”).

The underlying circularity in estimating values in the Concentric Appraisal is largely based on the assumption, unsupported by the weight of the evidence presented, that no buyer and seller would agree to a price different from “the return on investment authorized by the regulator as applied to the net book value of the[] assets” transferred. (See, e.g., Concentric Appraisal, pp. 25 and 40.) There is insufficient evidence in the record that would permit the board to conclude a willing seller would agree to sell the Property for the amounts calculated in that appraisal, notwithstanding the obvious incentive of each potential buyer to acquire the Property as a whole, or any part of it, for the lowest possible price.

In its decisions, the supreme court has repeatedly emphasized “fair market value” is generally:

[T]he price which in all probability would have been arrived at by fair negotiations between an owner willing to sell and a purchaser desiring to buy, taking into account all considerations that fairly might be brought forward and reasonably given substantial weight in such bargaining.” Society Hill at Merrimack Condo. Assoc. v. Town of

²² In support, the Municipalities cite and discuss, among other authorities, Public Service Company of New Hampshire v. New Hampton, 101 N.H. 142, 151 (1957); and Public Service Company of New Hampshire v. Farmington, BTLA Docket Nos. 1281-81 and 1940-82 (February 9, 1990).

Merrimack, 139 N.H. 253, 255 (1994) (quotation omitted); see Appeal of Pennichuck Water Works, 160 N.H. 18, 37 (2010).

Ventas Realty Limited Partnership v. City of Dover, 172 N.H. __ (2020)²³ (emphasis added). None of the Taxpayer's witnesses testified the Taxpayer would be willing to sell the Property or any part of it for the values estimated in the Concentric appraisals.

In this respect, the board is persuaded by the substantial sales and other evidence presented by the Municipalities that when utilities sell T&D assets they often receive consideration in excess of NBV -- so-called "acquisition premiums." (See, e.g., Municipalities' Post-Trial Memorandum, pp. 90-95, and Reply Memorandum, pp. 15-16.) At best, the evidence presented supports a finding that use of NBV or MNBV, for that matter, in the manner espoused by the Taxpayer and its expert appraiser, most likely sets a floor on price, rather than being a market-derived value negotiated between a willing buyer and seller in an arm's-length transaction.

The Taxpayer contends (both in its Initial Trial Memorandum, p. 4 and its Post-Trial Memorandum, p. 5) that the value of a utility is composed of many elements, not simply what it refers to as "physical assets" subject to property taxation in New Hampshire, citing RSA 72:6 and RSA 72:8. According to the Taxpayer, other components of value include items "such as contracts, personal property, equipment and other elements of business value . . ." One difficulty with the Taxpayer's contention, however, is that neither the Taxpayer nor its appraiser made any effort to quantify total value or to estimate what proportion of the total value stems from the value of its physical assets. This inability or refusal to delineate taxable real property value from business value and other non-taxable elements²⁴ lessens the credibility of the Taxpayer's market value estimates for the Property subject to taxation in these appeals.

The Municipalities are correct in arguing there is no credible evidence to support a finding that Ms. Bulkley performed an "independent review or analysis of [the Taxpayer's accounting] data" and why this and other circumstances raise questions regarding her compliance with professional appraisal standards. (See Municipalities' Prehearing Memorandum, p. 4, fn. 2; and Municipalities' Reply Memorandum, pp. 3-5.) In her testimony, Ms. Bulkley demonstrated little familiarity with the specific T&D assets in each Municipality.²⁵ It appears she inspected the T&D assets in several Municipalities (which she deemed a "representative sample") as part of her appraisal assignment and testified predominantly about two of them (Allenstown, the "illustrative" example in the Concentric Appraisal, and the Smith Hydro in Berlin.) The Municipalities' experts, perhaps due to their ongoing annual assessing responsibilities, conveyed a more complete and detailed knowledge regarding the Property and other utility assets throughout New Hampshire.

²³ <https://www.courts.state.nh.us/supreme/opinions/2020/2020002VentasRealty.pdf> (January 10, 2020 Slip Op. p. 3).

²⁴ Cf. Coroc Lakes Region, LLC v. Tilton, BTLA Docket No. 23508-07, et al. (June 10, 2010), pp. 8-10 ("there is no doubt a difference between business value or going concern value, not taxable under RSA 75:1, and real estate value, which is subject to taxation" and taxpayer, through its expert appraiser, failed to satisfy its burden on this issue).

²⁵ Cf. Concentric Appraisal, p. 3, where she states: "A physical site inspection of the T&D assets has been performed"; see also Prior BTLA Decision, pp. 26-27.

Further, the board is not persuaded by Ms. Bulkley's stated reasons for not applying the sales comparison approach in the Concentric appraisals to value the Property. In contrast, as noted above, the GES appraisals did apply the sales comparison approach (as well as the cost and income approaches). While utility asset sales can be complicated and may require additional research, the board finds there is support in the record for using market sales of utility property to arrive at a more credible indication of value. (See Municipalities' Post-Trial Memorandum, pp. 90-95, 114-16 and 129-34, and Reply Memorandum, pp. 5-8.)

In this respect, the supreme court has long recognized use of the sales comparison approach, along with four other approaches, to value utility property, and:

Typically, all relevant factors must be considered, but a trier of fact need not allocate specific weight to any one of the approaches listed . . . All of the enumerated approaches are valid, but all also have weaknesses. . . We have never attempted to tie the fact finder's hands with a rigid fair market value formula in the absence of legislative directive. . . . Rather, judgment is the touchstone.

Appeal of Public Service Company of New Hampshire, 170 N.H. at 94, quoting from Appeal of Pennichuck Water Works, 116 N.H. 18, 37-38 (2010) (internal quotations and citations omitted).

In this recent (2017) Public Service decision, the supreme court took special note of one sale (the "CVEC sale" presented by the Municipalities' expert) and concluded "the entire record of sales before the BTLA does not support PSNH's argument." (170 N.H. at 95-96.) In analyzing this sale, the supreme court stated: "it is also worth noting that the PUC ultimately permitted PSNH to amortize the \$21 million payment that it made to CVEC's parent company, meaning PSNH is able to eventually recover that acquisition premium [paid] through charges to its ratepayers"; moreover, "[b]ased upon [Mr. Sansoucy's] testimony, and the cited utility sales such as the CVEC sale, the BTLA could properly conclude that a probable purchaser would be willing to pay more than NBV for PSNH's property." (Id. at 96.) Additional details pertaining to the CVEC sale and the presence of acquisition premiums in the purchase and sale of utility property are contained in the Municipalities' Reply Memorandum, pp. 7-8.

The board agrees with the Municipalities' arguments that the Taxpayer in these appeals, as in the Prior BTLA Decision, did not produce sufficient credible evidence to support their arguments that the regulatory environment necessarily limits the market value of the T&D assets to some variation of NBV. (See Appeal of Public Service Company of New Hampshire, 170 N.H. at 95.) That supreme court decision affirmed the board's finding of a lack of "sufficient probative evidence that the utility regulatory environment in which [PSNH] operates, considering both the benefits and burdens of regulation, was so restrictive that any prospective purchaser would be limited to a return based upon [NBV]" and "merely identifying the presence of regulation that may impact the market value of property is insufficient." (Id.; cf. Municipalities' Prehearing Memorandum, pp. 9-10.)

The board has carefully reviewed the two recent superior court rulings regarding other utility property owned by the Taxpayer in Bow and Portsmouth, as identified above (see fn. 7 and

8). In their Post-Trial Memorandum (pp. 19-20), “[t]he Municipalities acknowledge [those two rulings] determined that the fair market value of [Eversource’s] property in those municipalities was approximately equivalent to the net book value of those assets.” They argue, however, what is necessary is “hard, quantitative evidence to establish the fair market value of regulated property is limited to the net book value of those assets,” citing “Appeal of Public Service Co., 124 N.H. [479] at 484-85 [1984] (stating that a finding that value is limited to net book ‘would be compelled only if regulation was so extensive as to make it impossible for a utility to be sold at a price in excess of net book value’).” The board finds the Taxpayer did not meet its burden of proof on this issue.

A review of the arguments and issues presented regarding the Bow and Portsmouth superior court decisions and the other authorities relied upon by the Taxpayer persuade the board that each tax abatement appeal must be decided on its own merits. Consequently, each fact finder must make its own judgments on the credibility, quality and quantity of evidence presented, rather than with reference to what a superior court judge may have concluded based on different evidence involving different property in a different tax year.²⁶ As noted by the supreme court, “the credibility of an appraisal is a question of fact that the trial court must decide based upon the evidence presented in a given case.” (See Bow, 170 N.H. at 541, quoted in the Taxpayer’s Initial Trial Memorandum, p. 6.)

The parties appear to recognize the board has concurrent jurisdiction to hear and decide property tax abatement appeals with the superior court. (Cf. RSA 76:16-a; and RSA 76-17.) The board is not bound by the rulings of that tribunal, especially when different experts and evidence are presented to estimate the market value of different assets for different tax years.²⁷

The board need not address the substantial disagreements between the expert appraisers regarding how to value the Taxpayer’s use of the public rights-of-way and its easements that are taxable as part of the Property. While there was much testimony presented regarding the most appropriate methodology for valuing these rights for assessment purposes, this component is

²⁶ If nothing else, the Bow and Portsmouth superior court rulings do reflect the possibility that other independent fact finders might find somewhat similar evidence and arguments to be persuasive. This is further support for denial of the motions for directed verdict presented by the Municipalities. (See Section II. C.1 above.)

²⁷ In Bow, the Taxpayer relied upon a different expert appraiser (John P. Kelly) to estimate the value of a coal fired generating plant (Merrimack Station) with combustion turbines and a “scrubber” and a relatively small “transmission and distribution network” serving part of one municipality – “approximately one hundred retail customers” (See Schedule U, pp. 3, 4 and 13-14.) In Bow, the superior court judge found the Taxpayer’s expert credible, including his belief that “based on the circumstances in Bow, he could not determine a market-based reason why any purchaser would pay a price in excess of PSNH’s original cost less depreciation for these assets.” (Id., p. 16.)

In Portsmouth, the Taxpayer and Portsmouth stipulated to the value of the Schiller Generating Station and other assets before trial and the trial judge accepted the values in the Taxpayer’s appraisal (prepared by the same expert, Ms. Bulkley, used in these appeals) for certain assets [the T&D assets and public rights-of-way (“ROWS”) in Portsmouth] but adjusted the transmission easement encumbrance factor upwards (from 10% to 50%). (Tab 18, pp. 26-27.) The trial judge went on to state her belief that the factors applied by each expert “were largely self-serving and cannot be relied upon as an unbiased judgment of an appropriate encumbrance factor.” (Id. at p. 26.)

relatively minor in relation to the values estimated for the T&D assets, land and improvements²⁸ and the Taxpayer's entire estate. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985)]. Consequently, no further discussion of their differences regarding the valuation of these rights is needed at this time.

Suffice it to say, the board does not find the Taxpayer met its burden of proving the Municipalities' differing estimates for these items resulted in disproportionality in light of the Taxpayer's entire estate. [Cf. Appeal of Walsh, 156 N.H. 347, 355-56 (2007) (a claim of disproportionality must address a taxpayer's entire estate (land and buildings) instead of focusing on one component, such as the land value)].

In light of the above findings, the board need not dwell on the numerous, remaining points of contention between the Taxpayer and the Municipalities. Among other things, the attorneys spent considerable time and resources challenging the professionalism, ethics and independence of the opposing expert witnesses in order to bolster support for their respective arguments pertaining to market values and the proportionality of the assessments. (See, e.g., the Municipalities' Post-Trial Memorandum, pp. 21-27, Reply Memorandum, pp. 4-5, and the Taxpayer's Reply Memorandum, pp. 2-7.) The board agrees with the Taxpayer that arguments of this type²⁹ can be shelved (deserve "little or no weight") given that the "central focus" of these tax abatement appeals should remain on whether the "credibility of the value opinions" presented support a finding of disproportionality. (Id., pp. 6-7.)

III. Summary and Conclusions

As detailed in Table 2, and for the reasons stated above, the board finds the market value evidence presented supports a finding abatements are warranted in 91 of the 138 appeals in this master docket and those 91 appeals are therefore granted. If the taxes have been paid, the amount paid on the value in excess of the abated amounts shown in Table 2 shall be refunded with interest at six percent per annum from date paid to refund date. The remaining 47 appeals are denied, however, because the board finds the evidence presented is not sufficient to satisfy the Taxpayer's burden of proving disproportionality.

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 the Decision is received. RSA 541:3; Tax 201.37. The rehearing motion must state with

²⁸ In Allentown, for example, Ms. Bulkley valued the easements and rights-of-way at approximately six percent of her "Concluded Fair Market Value" in 2014 and 2016, the tax years in dispute, while in Londonderry (the Municipality with the highest total estimated value in 2014) the easements and rights-of-way are valued at approximately three percent. [See Schedule T of the Concentric Appraisal, columns (g) and (h).]

²⁹ The attorneys also exchanged arguments as to whether the Taxpayer engages in "forum shopping" by filing some property tax abatement appeals in superior court and some with the board. (See Municipalities' Post-Trial Memorandum, p. 19; cf. Transcript, Day 1, pp. 37-42.)

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 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, Chairman

Albert F. Shamash, Member

Theresa M. Walker, Member

TABLE 1—Quantitative Summary
(Source: Taxpayer Exhibit No. 43)

BTLA DOCKET	MUNICIPALITY	STIPULATED ASSESSED VALUE	LEVEL OF ASSESSMENT	EQUALIZED ASSESSMENT	TAXPAYER MARKET VALUE ESTIMATE	MUNICIPALITY MARKET VALUE ESTIMATE
27769-14PT	Allenstown	\$4,082,400	94.0%	\$4,342,978.72	\$2,596,239	\$4,881,500
28780-16PT	Allenstown	\$4,256,900	90.9%	\$4,683,058.31	\$2,672,589	\$5,047,700
27772-14PT	Auburn	\$7,496,500	97.9%	\$7,657,303.37	\$5,460,821	\$7,559,100
27774-14PT	Bennington	\$3,221,200	103.1%	\$3,124,345.30	\$1,406,789	\$2,686,600
28124-15PT	Bennington	\$3,221,200	99.5%	\$3,237,386.93	\$1,446,834	\$2,748,100
28790-16PT	Bennington	\$3,221,200	91.5%	\$3,520,437.16	\$1,455,902	\$2,931,300
29292-17PT	Berlin	\$56,512,800	96.2%	\$58,745,114.35	\$34,000,000	\$49,000,000
27775-14PT	Bradford	\$4,127,500	114.4%	\$3,607,954.55	\$2,529,965	\$3,471,100
28126-15PT	Bradford	\$6,898,200	99.8%	\$6,912,024.05	\$5,043,739	\$5,921,300
28792-16PT	Bradford	\$4,916,500	100.6%	\$4,887,176.94	\$2,683,913	\$3,737,300
27779-14PT	Brookfield	\$1,062,000	99.7%	\$1,065,195.59	\$669,175	\$888,500
28128-15PT	Brookfield	\$1,062,000	98.0%	\$1,083,673.47	\$719,479	\$924,800
27782-14PT	Chester	\$19,362,900	95.7%	\$20,232,915.36	\$10,811,933	\$17,702,900
28804-16PT	Chester	\$37,905,200	93.9%	\$40,367,625.13	\$31,012,994	\$38,268,400
28806-16PT	Columbia	\$1,830,600	97.7%	\$1,873,694.98	\$1,045,618	\$1,905,800
29196-17PT	Columbia	\$2,069,500	88.9%	\$2,327,896.51	\$966,624	\$1,943,300
27784-14PT	Dalton	\$3,905,500	99.2%	\$3,936,995.97	\$1,745,092	\$3,537,400
28810-16PT	Dalton	\$3,741,100	108.8%	\$3,438,511.03	\$1,681,540	\$3,413,600
29197-17PT	Dalton	\$4,335,900	99.5%	\$4,357,688.44	\$2,543,294	\$3,693,900
27786-14PT	Deerfield	\$71,981,000	104.8%	\$68,684,160.31	\$46,996,753	\$64,335,700
28814-16PT	Deerfield	\$66,080,500	94.7%	\$69,778,775.08	\$51,631,459	\$69,730,600
27787-14PT	Dublin	\$4,008,800	101.2%	\$3,961,264.82	\$2,631,809	\$3,790,300
28132-15PT	Dublin	\$4,008,800	96.4%	\$4,158,506.22	\$2,320,804	\$3,807,500
28791-16PT	Dublin	\$4,008,800	108.5%	\$3,694,746.54	\$2,452,479	\$3,908,900
29198-17PT	Dummer	\$14,387,700	106.3%	\$13,534,995.30	\$8,513,862	\$11,138,000
27788-14PT	Dunbarton	\$6,578,400	99.6%	\$6,604,819.28	\$2,825,913	\$5,263,100
28133-15PT	Dunbarton	\$6,123,500	98.2%	\$6,235,743.38	\$3,102,399	\$5,317,300
28795-16PT	Dunbarton	\$6,518,300	89.6%	\$7,274,888.39	\$3,208,823	\$5,749,500
27789-14PT	Durham	\$16,177,900	95.6%	\$16,922,489.54	\$6,979,864	\$14,485,100
28134-15PT	Durham	\$17,960,100	93.4%	\$19,229,229.12	\$9,168,518	\$16,401,600
28797-16PT	Durham	\$20,957,500	92.4%	\$22,681,277.06	\$12,532,165	\$18,870,600
29199-17PT	Durham	\$24,446,600	88.0%	\$27,780,227.27	\$16,386,199	\$23,580,700
27790-14PT	East Kingston	\$744,600	98.9%	\$752,881.70	\$291,454	\$1,463,700
28135-15PT	East Kingston	\$744,600	89.6%	\$831,026.79	\$307,883	\$1,456,300

In Re: Public Service Company of New Hampshire

Master Docket No.: 28873-14-15-16-17PT

Page 24 of 31

BTLA DOCKET	MUNICIPALITY	STIPULATED ASSESSED VALUE	LEVEL OF ASSESSMENT	EQUALIZED ASSESSMENT	TAXPAYER MARKET VALUE ESTIMATE	MUNICIPALITY MARKET VALUE ESTIMATE
28798-16PT	East Kingston	\$744,600	91.9%	\$810,228.51	\$323,187	\$2,134,300
27792-14PT	Epping	\$12,900,600	99.2%	\$13,004,637.10	\$7,559,656	\$10,721,700
28137-15PT	Epping	\$12,784,800	94.3%	\$13,557,582.18	\$7,453,349	\$10,502,900
28802-16PT	Epping	\$12,754,000	89.2%	\$14,298,206.28	\$7,638,860	\$10,640,000
27794-14PT	Errol	\$2,591,800	98.2%	\$2,639,307.54	\$1,374,992	\$1,576,200
28139-15PT	Errol	\$2,591,800	105.3%	\$2,461,348.53	\$1,406,632	\$1,621,200
28807-16PT	Errol	\$2,591,800	99.1%	\$2,615,338.04	\$1,442,184	\$1,683,000
29201-17PT	Errol	\$2,591,800	98.8%	\$2,623,279.35	\$1,466,255	\$1,603,200
27795-14PT	Farmington	\$8,684,500	99.4%	\$8,736,921.53	\$5,382,427	\$8,225,100
28140-15PT	Farmington	\$8,684,500	97.1%	\$8,943,872.30	\$5,752,239	\$8,470,800
28809-16PT	Farmington	\$12,077,000	98.6%	\$12,248,478.70	\$7,631,593	\$9,402,400
29202-17PT	Farmington	\$12,161,600	88.6%	\$13,726,410.84	\$8,217,915	\$9,515,000
27798-14PT	Gilmanton	\$1,168,100	102.0%	\$1,145,196.08	\$535,127	\$997,100
28143-15PT	Gilmanton	\$1,225,000	103.9%	\$1,179,018.29	\$549,109	\$1,003,600
28706-16PT	Gilmanton	\$1,251,800	97.0%	\$1,290,515.46	\$558,077	\$1,033,800
29204-17PT	Gilmanton	\$1,244,600	94.4%	\$1,318,432.20	\$572,924	\$1,028,800
27800-14PT	Gorham	\$7,884,200	95.4%	\$8,264,360.59	\$5,289,266	\$9,180,200
28145-15PT	Gorham	\$9,659,200	110.8%	\$8,717,689.53	\$5,491,748	\$9,261,100
28708-16PT	Gorham	\$12,000,000	97.3%	\$12,332,990.75	\$6,424,179	\$9,950,900
29205-17PT	Gorham	\$11,521,600	97.2%	\$11,853,497.94	\$5,916,459	\$11,964,600
27803-14PT	Greenfield	\$3,133,700	98.9%	\$3,168,554.10	\$2,138,764	\$2,889,700
28148-15PT	Greenfield	\$3,133,700	99.3%	\$3,155,790.53	\$2,195,561	\$2,954,800
28711-16PT	Greenfield	\$3,133,700	91.1%	\$3,439,846.32	\$2,176,171	\$3,075,400
27804-14PT	Hampstead	\$12,208,000	98.5%	\$12,393,908.63	\$5,893,073	\$10,033,100
28150-15PT	Hampstead	\$12,497,700	91.4%	\$13,673,632.39	\$6,604,411	\$10,597,100
28714-16PT	Hampstead	\$12,353,600	89.0%	\$13,880,449.44	\$6,776,779	\$10,718,500
27807-14PT	Henniker	\$10,136,300	101.0%	\$10,035,940.59	\$5,455,031	\$8,839,000
28153-15PT	Henniker	\$12,137,900	99.1%	\$12,248,133.20	\$5,993,378	\$9,103,100
28719-16PT	Henniker	\$12,779,600	92.7%	\$13,785,976.27	\$6,748,456	\$10,364,800
27808-14PT	Hinsdale	\$27,441,600	106.6%	\$25,742,589.12	\$10,837,169	\$21,878,500
28155-15PT	Hinsdale	\$25,371,100	112.2%	\$22,612,388.59	\$11,415,192	\$22,007,900
28721-16PT	Hinsdale	\$27,610,200	104.5%	\$26,421,244.02	\$11,271,185	\$22,570,100
27811-14PT	Hudson	\$90,983,300	97.8%	\$93,029,959.10	\$53,619,673	\$81,559,400
28158-15PT	Hudson	\$96,388,296	92.7%	\$103,978,744.34	\$54,719,839	\$82,948,300
28724-16PT	Hudson	\$95,894,900	87.9%	\$109,095,449.37	\$57,637,010	\$85,832,700
27812-14PT	Keene	\$45,671,900	106.7%	\$42,804,029.99	\$32,986,779	\$49,345,200
28159-15PT	Keene	\$47,077,400	106.0%	\$44,412,641.51	\$34,809,188	\$49,893,400
28725-16PT	Keene	\$70,427,100	100.2%	\$70,286,526.95	\$42,717,217	\$57,350,300

BTLA DOCKET	MUNICIPALITY	STIPULATED ASSESSED VALUE	LEVEL OF ASSESSMENT	EQUALIZED ASSESSMENT	TAXPAYER MARKET VALUE ESTIMATE	MUNICIPALITY MARKET VALUE ESTIMATE
27813-14PT	Kensington	\$3,020,900	97.1%	\$3,111,122.55	\$838,690	\$3,759,000
28160-15PT	Kensington	\$3,020,900	95.6%	\$3,159,937.24	\$1,090,100	\$3,996,100
28726-16PT	Kensington	\$3,020,900	89.6%	\$3,371,540.18	\$898,840	\$3,791,900
27814-14PT	Lancaster	\$9,970,600	102.2%	\$9,755,968.69	\$5,058,689	\$9,066,300
28728-16PT	Lancaster	\$11,713,400	103.2%	\$11,350,193.80	\$6,086,057	\$9,507,900
29208-17PT	Lancaster	\$11,960,300	111.6%	\$10,717,114.70	\$7,231,155	\$10,017,900
28730-16PT	Lincoln	\$1,156,500	98.4%	\$1,175,304.88	\$424,839	\$1,105,400
29209-17PT	Lincoln	\$1,159,100	92.4%	\$1,254,437.23	\$592,747	\$1,114,800
27817-14PT	Littleton	\$28,494,900	107.8%	\$26,433,116.88	\$20,567,243	\$26,815,300
28164-15PT	Littleton	\$30,378,930	97.6%	\$31,125,952.87	\$24,769,265	\$31,294,900
28732-16PT	Littleton	\$34,418,530	93.3%	\$36,890,171.49	\$28,180,220	\$35,220,300
29210-17PT	Littleton	\$33,896,000	89.0%	\$38,085,393.26	\$29,730,269	\$36,411,400
27821-14PT	Madison	\$9,016,700	100.7%	\$8,954,021.85	\$5,376,934	\$9,093,100
28168-15PT	Madison	\$10,394,300	99.1%	\$10,488,698.28	\$5,679,323	\$9,245,200
28736-16PT	Madison	\$10,394,300	95.2%	\$10,918,382.35	\$6,058,682	\$9,529,000
29212-17PT	Madison	\$10,394,300	93.5%	\$11,116,898.40	\$6,158,312	\$9,600,700
27823-14PT	Milan	\$3,290,600	109.1%	\$3,016,131.99	\$1,835,572	\$3,340,400
28170-15PT	Milan	\$4,375,500	101.9%	\$4,293,915.60	\$2,094,023	\$3,506,500
28738-16PT	Milan	\$4,375,500	101.6%	\$4,306,594.49	\$2,398,915	\$3,710,200
29213-17PT	Milan	\$4,375,500	107.9%	\$4,055,143.65	\$2,784,370	\$3,988,500
27824-14PT	Nashua	\$97,315,400	92.8%	\$104,865,732.76	\$69,965,234	\$116,447,000
28172-15PT	Nashua	\$99,837,500	88.5%	\$112,810,734.46	\$72,263,919	\$117,281,500
28740-16PT	Nashua	\$99,837,500	84.5%	\$118,150,887.57	\$75,369,011	\$119,718,600
27828-14PT	New Hampton	\$13,154,200	105.0%	\$12,527,809.52	\$8,426,971	\$11,566,100
28743-16PT	New Hampton	\$16,844,700	103.3%	\$16,306,582.77	\$8,720,917	\$14,557,300
29214-17PT	New Hampton	\$18,200,300	90.5%	\$20,110,828.73	\$9,916,914	\$15,037,000
27829-14PT	New Ipswich	\$9,864,300	100.7%	\$9,795,729.89	\$6,213,278	\$10,233,800
28175-15PT	New Ipswich	\$9,795,700	99.4%	\$9,854,828.97	\$6,418,172	\$10,335,500
28745-16PT	New Ipswich	\$13,377,400	93.0%	\$14,384,301.08	\$7,066,964	\$10,842,800
27830-14PT	Newport	\$12,400,400	107.7%	\$11,513,834.73	\$8,152,460	\$12,990,800
28176-15PT	Newport	\$13,926,200	100.1%	\$13,912,287.71	\$8,640,655	\$13,223,600
28746-16PT	Newport	\$16,197,600	103.6%	\$15,634,749.03	\$8,716,043	\$14,619,800
29215-17PT	Newport	\$18,480,600	99.0%	\$18,667,272.73	\$10,590,480	\$15,300,800
27836-14PT	Randolph	\$2,218,600	100.9%	\$2,198,810.70	\$885,157	\$2,340,800
28179-15PT	Randolph	\$2,218,600	117.4%	\$1,889,778.53	\$924,596	\$2,363,500
28759-16PT	Randolph	\$2,218,600	103.0%	\$2,153,980.58	\$1,180,670	\$2,569,300
29220-17PT	Randolph	\$2,218,600	110.8%	\$2,002,346.57	\$1,173,996	\$2,528,000
27837-14PT	Raymond	\$14,325,800	98.7%	\$14,514,488.35	\$6,026,490	\$11,504,000

In Re: Public Service Company of New Hampshire

Master Docket No.: 28873-14-15-16-17PT

Page 26 of 31

BTLA DOCKET	MUNICIPALITY	STIPULATED ASSESSED VALUE	LEVEL OF ASSESSMENT	EQUALIZED ASSESSMENT	TAXPAYER MARKET VALUE ESTIMATE	MUNICIPALITY MARKET VALUE ESTIMATE
28760-16PT	Raymond	\$14,697,000	96.9%	\$15,167,182.66	\$6,180,585	\$12,066,400
27839-14PT	Rumney	\$284,200	100.8%	\$281,944.44	\$51,957	\$255,500
28181-15PT	Rumney	\$287,200	101.8%	\$282,121.81	\$49,025	\$257,700
28764-16PT	Rumney	\$293,200	96.9%	\$302,579.98	\$49,871	\$259,300
27840-14PT	Sandwich	\$3,059,700	98.0%	\$3,122,142.86	\$1,004,519	\$2,806,500
28182-15PT	Sandwich	\$2,880,100	94.1%	\$3,060,680.13	\$1,045,322	\$2,855,200
28766-16PT	Sandwich	\$3,071,100	101.6%	\$3,022,736.22	\$1,363,229	\$3,144,400
29222-17PT	Sandwich	\$3,332,000	95.9%	\$3,474,452.55	\$2,543,238	\$3,263,400
27847-14PT	Springfield	\$3,496,500	104.3%	\$3,352,348.99	\$1,538,959	\$3,100,900
28187-15PT	Springfield	\$3,658,400	99.7%	\$3,669,408.22	\$1,616,790	\$3,144,200
28772-16PT	Springfield	\$3,527,400	97.9%	\$3,603,064.35	\$1,657,654	\$3,127,400
29223-17PT	Springfield	\$3,809,100	99.2%	\$3,839,818.55	\$1,787,778	\$3,224,600
27850-14PT	Stoddard	\$5,276,200	99.6%	\$5,297,389.56	\$3,360,424	\$4,679,600
28188-15PT	Stoddard	\$5,009,100	103.9%	\$4,821,077.96	\$3,356,632	\$4,731,700
28775-16PT	Stoddard	\$5,009,100	102.9%	\$4,867,930.03	\$3,420,997	\$4,747,400
28779-16PT	Thornton	\$1,411,400	100.9%	\$1,398,810.70	\$859,322	\$1,511,800
29226-17PT	Thornton	\$1,411,400	100.9%	\$1,398,810.70	\$867,464	\$1,495,900
27857-14PT	Tuftonboro	\$2,841,600	99.3%	\$2,861,631.42	\$1,259,133	\$2,539,500
28193-15PT	Tuftonboro	\$2,852,800	97.7%	\$2,919,959.06	\$1,233,923	\$2,552,400
28781-16PT	Tuftonboro	\$3,067,600	98.7%	\$3,108,004.05	\$1,532,514	\$2,825,100
29227-17PT	Tuftonboro	\$4,519,900	91.4%	\$4,945,186.00	\$2,998,650	\$4,117,600
27858-14PT	Unity	\$774,000	99.0%	\$781,818.18	\$487,957	\$741,500
28194-15PT	Unity	\$774,000	99.2%	\$780,241.94	\$511,259	\$756,200
27862-14PT	Whitefield	\$16,100,600	101.8%	\$15,815,913.56	\$8,064,256	\$13,969,800
28786-16PT	Whitefield	\$18,110,100	101.1%	\$17,913,056.38	\$10,121,053	\$15,940,500
29229-17PT	Whitefield	\$18,923,000	101.2%	\$18,698,616.60	\$10,945,741	\$16,986,300
28199-15PT	Winchester	\$16,003,800	103.0%	\$15,537,669.90	\$8,596,123	\$17,561,900
28789-16PT	Winchester	\$16,003,800	108.8%	\$14,709,375.00	\$8,796,337	\$17,898,000
Totals					\$1,268,630,862	\$1,950,174,400

TABLE 2 – Findings in Each Appeal

BTLA DOCKET	MUNICIPALITY	STIPULATED ASSESSED VALUE	MARKET VALUE ADJUSTED BY LEVEL OF ASSESSMENT	\$ OF OVER / UNDER ASSESSMENT	% OF OVER / UNDER ASSESSMENT	ABATED ASSESSMENT
27769-14PT	Allenstown	\$4,082,400	\$4,588,610	(\$506,210)	-12.4%	N/A - Denied
28780-16PT	Allenstown	\$4,256,900	\$4,588,359	(\$331,459)	-7.8%	N/A - Denied
27772-14PT	Auburn	\$7,496,500	\$7,400,359	\$96,141	1.28%	N/A - Denied
27774-14PT	Bennington	\$3,221,200	\$2,769,885	\$451,315	14.01%	\$2,769,885
28124-15PT	Bennington	\$3,221,200	\$2,734,360	\$486,841	15.11%	\$2,734,360
28790-16PT	Bennington	\$3,221,200	\$2,682,140	\$539,061	16.73%	\$2,682,140
29292-17PT	Berlin	\$56,512,800	\$47,138,000	\$9,374,800	16.59%	\$47,138,000
27775-14PT	Bradford	\$4,127,500	\$3,970,938	\$156,562	3.79%	N/A - Denied
28126-15PT	Bradford	\$6,898,200	\$5,909,457	\$988,743	14.33%	\$5,909,457
28792-16PT	Bradford	\$4,916,500	\$3,759,724	\$1,156,776	23.53%	\$3,759,724
27779-14PT	Brookfield	\$1,062,000	\$885,835	\$176,166	16.59%	\$885,835
28128-15PT	Brookfield	\$1,062,000	\$906,304	\$155,696	14.66%	\$906,304
27782-14PT	Chester	\$19,362,900	\$16,941,675	\$2,421,225	12.50%	\$16,941,675
28804-16PT	Chester	\$37,905,200	\$35,934,028	\$1,971,172	5.20%	\$35,934,028
28806-16PT	Columbia	\$1,830,600	\$1,861,967	(\$31,367)	-1.7%	N/A - Denied
29196-17PT	Columbia	\$2,069,500	\$1,727,594	\$341,906	16.52%	\$1,727,594
27784-14PT	Dalton	\$3,905,500	\$3,509,101	\$396,399	10.15%	\$3,509,101
28810-16PT	Dalton	\$3,741,100	\$3,713,997	\$27,103	0.72%	N/A - Denied
29197-17PT	Dalton	\$4,335,900	\$3,675,431	\$660,470	15.23%	\$3,675,431
27786-14PT	Deerfield	\$71,981,000	\$67,423,814	\$4,557,186	6.33%	\$67,423,814
28814-16PT	Deerfield	\$66,080,500	\$66,034,878	\$45,622	0.07%	N/A - Denied
27787-14PT	Dublin	\$4,008,800	\$3,835,784	\$173,016	4.32%	N/A - Denied
28132-15PT	Dublin	\$4,008,800	\$3,670,430	\$338,370	8.44%	\$3,670,430
28791-16PT	Dublin	\$4,008,800	\$4,241,157	(\$232,357)	-5.8%	N/A - Denied
29198-17PT	Dummer	\$14,387,700	\$11,839,694	\$2,548,006	17.71%	\$11,839,694
27788-14PT	Dunbarton	\$6,578,400	\$5,242,048	\$1,336,352	20.31%	\$5,242,048
28133-15PT	Dunbarton	\$6,123,500	\$5,221,589	\$901,911	14.73%	\$5,221,589
28795-16PT	Dunbarton	\$6,518,300	\$5,151,552	\$1,366,748	20.97%	\$5,151,552
27789-14PT	Durham	\$16,177,900	\$13,847,756	\$2,330,144	14.40%	\$13,847,756
28134-15PT	Durham	\$17,960,100	\$15,319,094	\$2,641,006	14.70%	\$15,319,094
28797-16PT	Durham	\$20,957,500	\$17,436,434	\$3,521,066	16.80%	\$17,436,434
29199-17PT	Durham	\$24,446,600	\$20,751,016	\$3,695,584	15.12%	\$20,751,016
27790-14PT	East Kingston	\$744,600	\$1,447,599	(\$702,999)	-94.4%	N/A - Denied
28135-15PT	East Kingston	\$744,600	\$1,304,845	(\$560,245)	-75.2%	N/A - Denied

In Re: Public Service Company of New Hampshire

Master Docket No.: 28873-14-15-16-17PT

Page 28 of 31

BTLA DOCKET	MUNICIPALITY	STIPULATED ASSESSED VALUE	MARKET VALUE ADJUSTED BY LEVEL OF ASSESSMENT	\$ OF OVER / UNDER ASSESSMENT	% OF OVER / UNDER ASSESSMENT	ABATED ASSESSMENT
28798-16PT	East Kingston	\$744,600	\$1,961,422	(\$1,216,822)	-163.4%	N/A - Denied
27792-14PT	Epping	\$12,900,600	\$10,635,926	\$2,264,674	17.55%	\$10,635,926
28137-15PT	Epping	\$12,784,800	\$9,904,235	\$2,880,565	22.53%	\$9,904,235
28802-16PT	Epping	\$12,754,000	\$9,490,880	\$3,263,120	25.59%	\$9,490,880
27794-14PT	Errol	\$2,591,800	\$1,547,828	\$1,043,972	40.28%	\$1,547,828
28139-15PT	Errol	\$2,591,800	\$1,707,124	\$884,676	34.13%	\$1,707,124
28807-16PT	Errol	\$2,591,800	\$1,667,853	\$923,947	35.65%	\$1,667,853
29201-17PT	Errol	\$2,591,800	\$1,583,962	\$1,007,838	38.89%	\$1,583,962
27795-14PT	Farmington	\$8,684,500	\$8,175,749	\$508,751	5.86%	\$8,175,749
28140-15PT	Farmington	\$8,684,500	\$8,225,147	\$459,353	5.29%	\$8,225,147
28809-16PT	Farmington	\$12,077,000	\$9,270,766	\$2,806,234	23.24%	\$9,270,766
29202-17PT	Farmington	\$12,161,600	\$8,430,290	\$3,731,310	30.68%	\$8,430,290
27798-14PT	Gilmanton	\$1,168,100	\$1,017,042	\$151,058	12.93%	\$1,017,042
28143-15PT	Gilmanton	\$1,225,000	\$1,042,740	\$182,260	14.88%	\$1,042,740
28706-16PT	Gilmanton	\$1,251,800	\$1,002,786	\$249,014	19.89%	\$1,002,786
29204-17PT	Gilmanton	\$1,244,600	\$971,187	\$273,413	21.97%	\$971,187
27800-14PT	Gorham	\$7,884,200	\$8,757,911	(\$873,711)	-11.1%	N/A - Denied
28145-15PT	Gorham	\$9,659,200	\$10,261,299	(\$602,099)	-6.2%	N/A - Denied
28708-16PT	Gorham	\$12,000,000	\$9,682,226	\$2,317,774	19.31%	\$9,682,226
29205-17PT	Gorham	\$11,521,600	\$11,629,591	(\$107,991)	-0.9%	N/A - Denied
27803-14PT	Greenfield	\$3,133,700	\$2,857,913	\$275,787	8.80%	\$2,857,913
28148-15PT	Greenfield	\$3,133,700	\$2,934,116	\$199,584	6.37%	\$2,934,116
28711-16PT	Greenfield	\$3,133,700	\$2,801,689	\$332,011	10.59%	\$2,801,689
27804-14PT	Hampstead	\$12,208,000	\$9,882,604	\$2,325,397	19.05%	\$9,882,604
28150-15PT	Hampstead	\$12,497,700	\$9,685,749	\$2,811,951	22.50%	\$9,685,749
28714-16PT	Hampstead	\$12,353,600	\$9,539,465	\$2,814,135	22.78%	\$9,539,465
27807-14PT	Henniker	\$10,136,300	\$8,927,390	\$1,208,910	11.93%	\$8,927,390
28153-15PT	Henniker	\$12,137,900	\$9,021,172	\$3,116,728	25.68%	\$9,021,172
28719-16PT	Henniker	\$12,779,600	\$9,608,170	\$3,171,430	24.82%	\$9,608,170
27808-14PT	Hinsdale	\$27,441,600	\$23,322,481	\$4,119,119	15.01%	\$23,322,481
28155-15PT	Hinsdale	\$25,371,100	\$24,692,864	\$678,236	2.67%	N/A - Denied
28721-16PT	Hinsdale	\$27,610,200	\$23,585,755	\$4,024,446	14.58%	\$23,585,755
27811-14PT	Hudson	\$90,983,300	\$79,765,093	\$11,218,207	12.33%	\$79,765,093
28158-15PT	Hudson	\$96,388,296	\$76,893,074	\$19,495,222	20.23%	\$76,893,074
28724-16PT	Hudson	\$95,894,900	\$75,446,943	\$20,447,957	21.32%	\$75,446,943
27812-14PT	Keene	\$45,671,900	\$52,651,328	(\$6,979,428)	-15.3%	N/A - Denied
28159-15PT	Keene	\$47,077,400	\$52,887,004	(\$5,809,604)	-12.3%	N/A - Denied
28725-16PT	Keene	\$70,427,100	\$57,465,001	\$12,962,099	18.40%	\$57,465,001

BTLA DOCKET	MUNICIPALITY	STIPULATED ASSESSED VALUE	MARKET VALUE ADJUSTED BY LEVEL OF ASSESSMENT	\$ OF OVER / UNDER ASSESSMENT	% OF OVER / UNDER ASSESSMENT	ABATED ASSESSMENT
27813-14PT	Kensington	\$3,020,900	\$3,649,989	(\$629,089)	-20.8%	N/A - Denied
28160-15PT	Kensington	\$3,020,900	\$3,820,272	(\$799,372)	-26.5%	N/A - Denied
28726-16PT	Kensington	\$3,020,900	\$3,397,542	(\$376,642)	-12.5%	N/A - Denied
27814-14PT	Lancaster	\$9,970,600	\$9,265,759	\$704,841	7.07%	\$9,265,759
28728-16PT	Lancaster	\$11,713,400	\$9,812,153	\$1,901,247	16.23%	\$9,812,153
29208-17PT	Lancaster	\$11,960,300	\$11,179,976	\$780,324	6.52%	\$11,179,976
28730-16PT	Lincoln	\$1,156,500	\$1,087,714	\$68,786	5.95%	\$1,087,714
29209-17PT	Lincoln	\$1,159,100	\$1,030,075	\$129,025	11.13%	\$1,030,075
27817-14PT	Littleton	\$28,494,900	\$28,906,893	(\$411,993)	-1.4%	N/A - Denied
28164-15PT	Littleton	\$30,378,930	\$30,543,822	(\$164,892)	-0.5%	N/A - Denied
28732-16PT	Littleton	\$34,418,530	\$32,860,540	\$1,557,990	4.53%	N/A - Denied
29210-17PT	Littleton	\$33,896,000	\$32,406,146	\$1,489,854	4.40%	N/A - Denied
27821-14PT	Madison	\$9,016,700	\$9,156,752	(\$140,052)	-1.6%	N/A - Denied
28168-15PT	Madison	\$10,394,300	\$9,161,993	\$1,232,307	11.86%	\$9,161,993
28736-16PT	Madison	\$10,394,300	\$9,071,608	\$1,322,692	12.73%	\$9,071,608
29212-17PT	Madison	\$10,394,300	\$8,976,655	\$1,417,646	13.64%	\$8,976,655
27823-14PT	Milan	\$3,290,600	\$3,644,376	(\$353,776)	-10.8%	N/A - Denied
28170-15PT	Milan	\$4,375,500	\$3,573,124	\$802,377	18.34%	\$3,573,124
28738-16PT	Milan	\$4,375,500	\$3,769,563	\$605,937	13.85%	\$3,769,563
29213-17PT	Milan	\$4,375,500	\$4,303,592	\$71,909	1.64%	N/A - Denied
27824-14PT	Nashua	\$97,315,400	\$108,062,816	(\$10,747,416)	-11.0%	N/A - Denied
28172-15PT	Nashua	\$99,837,500	\$103,794,128	(\$3,956,628)	-4.0%	N/A - Denied
28740-16PT	Nashua	\$99,837,500	\$101,162,217	(\$1,324,717)	-1.3%	N/A - Denied
27828-14PT	New Hampton	\$13,154,200	\$12,144,405	\$1,009,795	7.68%	\$12,144,405
28743-16PT	New Hampton	\$16,844,700	\$15,037,691	\$1,807,009	10.73%	\$15,037,691
29214-17PT	New Hampton	\$18,200,300	\$13,608,485	\$4,591,815	25.23%	\$13,608,485
27829-14PT	New Ipswich	\$9,864,300	\$10,305,437	(\$441,137)	-4.5%	N/A - Denied
28175-15PT	New Ipswich	\$9,795,700	\$10,273,487	(\$477,787)	-4.9%	N/A - Denied
28745-16PT	New Ipswich	\$13,377,400	\$10,083,804	\$3,293,596	24.62%	\$10,083,804
27830-14PT	Newport	\$12,400,400	\$13,991,092	(\$1,590,692)	-12.8%	N/A - Denied
28176-15PT	Newport	\$13,926,200	\$13,236,824	\$689,376	4.95%	N/A - Denied
28746-16PT	Newport	\$16,197,600	\$15,146,113	\$1,051,487	6.49%	\$15,146,113
29215-17PT	Newport	\$18,480,600	\$15,147,792	\$3,332,808	18.03%	\$15,147,792
27836-14PT	Randolph	\$2,218,600	\$2,361,867	(\$143,267)	-6.5%	N/A - Denied
28179-15PT	Randolph	\$2,218,600	\$2,774,749	(\$556,149)	-25.1%	N/A - Denied
28759-16PT	Randolph	\$2,218,600	\$2,646,379	(\$427,779)	-19.3%	N/A - Denied
29220-17PT	Randolph	\$2,218,600	\$2,801,024	(\$582,424)	-26.3%	N/A - Denied
27837-14PT	Raymond	\$14,325,800	\$11,354,448	\$2,971,352	20.74%	\$11,354,448

In Re: Public Service Company of New Hampshire

Master Docket No.: 28873-14-15-16-17PT

Page 30 of 31

BTLA DOCKET	MUNICIPALITY	STIPULATED ASSESSED VALUE	MARKET VALUE ADJUSTED BY LEVEL OF ASSESSMENT	\$ OF OVER / UNDER ASSESSMENT	% OF OVER / UNDER ASSESSMENT	ABATED ASSESSMENT
28760-16PT	Raymond	\$14,697,000	\$11,692,342	\$3,004,658	20.44%	\$11,692,342
27839-14PT	Rumney	\$284,200	\$257,544	\$26,656	9.38%	\$257,544
28181-15PT	Rumney	\$287,200	\$262,339	\$24,861	8.66%	\$262,339
28764-16PT	Rumney	\$293,200	\$251,262	\$41,938	14.30%	\$251,262
27840-14PT	Sandwich	\$3,059,700	\$2,750,370	\$309,330	10.11%	\$2,750,370
28182-15PT	Sandwich	\$2,880,100	\$2,686,743	\$193,357	6.71%	\$2,686,743
28766-16PT	Sandwich	\$3,071,100	\$3,194,710	(\$123,610)	-4.0%	N/A - Denied
29222-17PT	Sandwich	\$3,332,000	\$3,129,601	\$202,399	6.07%	\$3,129,601
27847-14PT	Springfield	\$3,496,500	\$3,234,239	\$262,261	7.50%	\$3,234,239
28187-15PT	Springfield	\$3,658,400	\$3,134,767	\$523,633	14.31%	\$3,134,767
28772-16PT	Springfield	\$3,527,400	\$3,061,725	\$465,675	13.20%	\$3,061,725
29223-17PT	Springfield	\$3,809,100	\$3,198,803	\$610,297	16.02%	\$3,198,803
27850-14PT	Stoddard	\$5,276,200	\$4,660,882	\$615,318	11.66%	\$4,660,882
28188-15PT	Stoddard	\$5,009,100	\$4,916,236	\$92,864	1.85%	N/A - Denied
28775-16PT	Stoddard	\$5,009,100	\$4,885,075	\$124,025	2.48%	N/A - Denied
28779-16PT	Thornton	\$1,411,400	\$1,525,406	(\$114,006)	-8.1%	N/A - Denied
29226-17PT	Thornton	\$1,411,400	\$1,509,363	(\$97,963)	-6.9%	N/A - Denied
27857-14PT	Tuftonboro	\$2,841,600	\$2,521,724	\$319,877	11.26%	\$2,521,724
28193-15PT	Tuftonboro	\$2,852,800	\$2,493,695	\$359,105	12.59%	\$2,493,695
28781-16PT	Tuftonboro	\$3,067,600	\$2,788,374	\$279,226	9.10%	\$2,788,374
29227-17PT	Tuftonboro	\$4,519,900	\$3,763,486	\$756,414	16.74%	\$3,763,486
27858-14PT	Unity	\$774,000	\$734,085	\$39,915	5.16%	\$734,085
28194-15PT	Unity	\$774,000	\$750,150	\$23,850	3.08%	N/A - Denied
27862-14PT	Whitefield	\$16,100,600	\$14,221,256	\$1,879,344	11.67%	\$14,221,256
28786-16PT	Whitefield	\$18,110,100	\$16,115,846	\$1,994,255	11.01%	\$16,115,846
29229-17PT	Whitefield	\$18,923,000	\$17,190,136	\$1,732,864	9.16%	\$17,190,136
28199-15PT	Winchester	\$16,003,800	\$18,088,757	(\$2,084,957)	-13.0%	N/A - Denied
28789-16PT	Winchester	\$16,003,800	\$19,473,024	(\$3,469,224)	-21.7%	N/A - Denied

NOTES:

Source of Stipulated Assessed Value column is Table 1; and

Market Value Adjusted by Level of Assessment is calculated by multiplying Municipality Market Value Estimate by the Level of Assessment columns in Table 1.

CERTIFICATION FOR TAX YEARS 2014, 2015, 2016 & 2017

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to the attorneys and representatives of the parties, for further distribution to each of them, as follows:

For the Taxpayer: Margaret H. Nelson, Esq., Sulloway & Hollis, 9 Capitol Street, Concord, NH 03301-

For all Municipalities except the Town of Dummer: Walter L. Mitchell, Esq., Mitchell Municipal Group, P.A., 25 Beacon St. East, Laconia, NH 03246; Christopher L. Boldt, Esq., Donahue, Tucker & Ciandella, PLLC, Towle House – Unit 2, 164 NH Route 25, Meredith, NH 03253; Barton Mayer, Esq., Upton & Hatfield, LLP, 10 Centre Street, P.O. Box 1090, Concord, NH 03302-1090; Steven Bolton, Esq. and Celia Leonard, Esq., City of Nashua, 229 Main Street, Nashua, NH 03061.

For the Town of Dummer: Chairman, Board of Selectmen, Town of Dummer, 75 Hill Road, Dummer, NH 03588; and Mr. George E. Sansoucy, George E. Sansoucy, PE, LLC, 89 Reed Road, Lancaster, NH 03584.

A copy of the Decision will also be posted on the board's website.

Date: June 23, 2020

Anne M. Stelmach, Clerk

In Re:
Public Service Company of New Hampshire d/b/a Eversource Energy
Master Docket No.: 28873-14-15-16-17PT

ORDER

The board has reviewed the three separate “Motions” and one letter (described below) filed by certain of the “Municipalities” on July 23, 2020. These pleadings challenge discrete aspects of the June 23, 2020 Decision. The “Taxpayer” did not challenge the Decision in any respect, but did file “Objections” to each of the Motions and a letter response on August 12, 2020. At issue are the following:

- (1) the “Motion for Partial Reconsideration” filed by the Towns of Durham, Farmington and Sandwich which was ‘joined’ by the “DTC Municipalities” through a “Notice of Joinder”;
- (2) the City of Berlin’s “Limited Motion for Rehearing”;
- (3) the City of Keene’s “Motion to Correct Stipulation”; and
- (4) a letter from Attorney Hilliard citing Rule 3.3(a)(1) of the Rules of Professional Conduct submitted to correct what he describes as a “tabulation error.”

For clarity of presentation, the board will address and resolve the issues presented in each pleading in separate sections of this Order.

As a starting point, however, the board finds the Taxpayer is correct in summarizing the relevant standards for rehearing and reconsideration motions, standards which the Municipalities have failed to satisfy. (See, e.g., the “Taxpayer’s Objection to Motion for Partial Reconsideration” at pp. 4-6 and 12-14.) Further, and as stated in the Decision (pp. 19-20) and prior board rulings:

There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the municipality’s general level of assessment, represents a reasonable measure of one’s tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979). The board has followed this principle in prior decisions. [Citations omitted.]¹

Consequently, the board adopted a materiality standard in the Decision (which the Municipalities have not challenged). This standard resulted in findings containing what could be described as a five percent tolerance factor or ‘margin of error.’ (Id.) In other words, the board found, using its judgment and experience, a range of estimated market values within five percent of the equalized

¹ As noted in the Decision (see fn.18), this is consistent with the board’s findings in the Prior BTLA Decision at p. 9 and In re: New Hampshire Electric Cooperative (July 2, 2015 Decision in multiple tax year 2011 and 2012 dockets) at p.7. See also Appeal of Public Service Company of New Hampshire, 170 N.H. at 92 (recognizing board’s application of a materiality standard to overassessments).

assessments was reasonably proportional in these appeals. This consideration counters to at least some extent the Municipalities' claims of harm (see below). The board finds these claims result largely, if not entirely, from numerical errors of their own making (despite repeated opportunities to discover and correct them²). In these circumstances, it would be unjust and unfair to saddle the Taxpayer with the consequences of those errors attributable either to the attorneys or assessors for the Municipalities.

A. The Motion for Partial Reconsideration is Denied.

In this motion, the Municipalities argue the board should reconsider certain values set forth in Tables 1 and 2 of the Decision that were used to make findings on the proportionality of the assessments under appeal. These values were supplied by the Municipalities themselves in the stipulations agreed to by them in Taxpayer Exhibit No. 43. For the reasons stated in the Taxpayer's Objection (see pp. 5-13) the motion is without merit and is therefore denied.

B. The Limited Motion for Rehearing is Denied.

In this "Limited Motion," the City of Berlin claims the board erred in rejecting its arguments that, in adjusting for the level of assessment in tax year 2017 to achieve proportionality, the median ratio for tax year 2016 should be applied. Berlin's motion is denied for the reasons stated in the Taxpayer's Objection (see pp. 4 and 7-14). The board notes the Town of Dummer joined in this argument by the City at the consolidated hearing of these appeals, but has not filed its own motion for rehearing on this issue or joined in this Limited Motion.

The board will next address the somewhat misleading claim in the Limited Motion (see paragraph 24) that the tax year 2016 ratio was the only ratio that was "known or knowable" at the time of its annual MS-1 filing (by September 1st of tax year 2017). While the department of revenue administration (the "DRA") calculates ratios each year for each community, they are based on sales the City itself provides to the DRA after the City has reviewed and verified the veracity of the sales information. Additionally, the ratio for tax year 2017 was calculated based on sales that occurred from October 1, 2016 through September 30, 2017. Clearly, the City and its assessors had reason to know the majority of sales included in the ratio calculation by September 1st.

Part of the duties and responsibilities of any professional assessor is to review and analyze ratios on a regular and ongoing basis to determine if and when it is appropriate to complete a municipal reassessment. The City's utility assessor, GES, headed by George Sansoucy, is reputed to have wide experience in this field.

The board received a City document provided by the office of the City's attorney (Christopher L. Boldt) in In Re: City of Berlin, Docket No. 29285-19OS. That document, entitled "City Council Work Session Minutes October 1, 2018," states that, due to concerns expressed by City officials based on their utility appraisers' (GES) estimated ratio and its effect on the City's

² See, e.g., Taxpayer Objection to Motion for Partial Reconsideration, pp. 1-2, where the Taxpayer notes the process and stipulations agreed upon by the Municipalities that resulted in these alleged errors.

tax rate, the City decided to complete a statistical analysis in September, 2018 for the 2018 tax year. The board is also aware the City is in the process of completing another statistical update for tax year 2020, due in large part to an “estimated equalization rate for 2020.”³

Paragraph 25 of the Limited Motion states: “Mr. Sansoucy explained that the City must annually assess the fair market value of utility property and certain other property to account for material changes and improvements.... Mr. Sansoucy testified that the City then equalized those assessments based on the most recent DRA equalization ratio available at that time.” The board finds this to be improper insofar as it appears to be an attempt by Mr. Sansoucy to treat utility companies differently from other taxpayers, which is not permissible. In Portland Pipe Line Corporation v. Town of Gorham, Docket Nos.: 24198-08PT/25123-09PT/25539-10PT, (July 22, 2013 decision) the board stated:

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, 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.

³ See the following statement in the “Property Revaluation” public notice posted on the City’s website by the Board of Assessors on June 16, 2020:

State law requires a full value reassessment at least every five years. This is so that assessments will reflect current market value, Statewide. As the real estate market changes (up or down), the City is required to have assessments between 90% and 110% of current market values. The last full revaluation conducted in Berlin was in 2015. The equalization rate for Berlin in 2019 was determined by the State of New Hampshire Department of Revenue to be 93.8%. If no revaluation is done in 2020, the estimated equalization rate for 2020 will be 88%.

(<https://www.berlinnh.gov/assessing/news/property-revaluation>)

In brief, the responsibility of an assessor is to estimate market values, not calibrate assessments of any taxpayer, such as a utility, to achieve a tax revenue target. These considerations and concerns further support denial of the Limited Motion.

C. The Motion to Correct Stipulation is Denied.

In this motion, the City of Keene (“Keene”) wishes to amend “Stipulations submitted to [the board] on July 19, 2018 and December 23, 2019 to correct a mutual mistake in those Stipulations with regard to the aggregate assessments for Tax Year 2014 and 2016.” The record does not reflect any “mutual mistake” deserving of correction and the Taxpayer’s Objection (see pp. 1 and 5-11) correctly states the reasons the board finds this motion should be denied.

D. The Letter Request to Correct the Alleged Tabulation Error is Denied.

In this letter one of the Municipalities’ attorneys invokes Rule 3.3(a) (1) of the New Hampshire Rules of Professional Conduct to argue the board should correct its findings with respect to eight Municipalities (“Deerfield, Dublin, Dummer, Dunbarton, Durham, East Kingston, Epping and Errol”) “for Tax Year 2016 only.”⁴ This argument for correction cannot be sustained. Instead, the board agrees with the reasons stated in the Taxpayer’s letter Objection (pp.

⁴ Rule 3.3(a) (1), entitled “ Candor Toward the Tribunal,” states:

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer’s client, or a witness called by the lawyer, has offered material evidence and comes to know if its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) In an *ex parte* proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

(d) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

1-2), which explain why the board “can properly decide not to make the proposed correction at this time.”

E. Summary

In summary, each of the above Motions and the letter request discussed above is denied.

Pursuant to RSA 541:6, any appeal of the Decision must be by petition to the supreme court filed within thirty (30) days of the date on this Order, with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.
BOARD OF TAX AND LAND APPEALS

Anne M. Stelmach, Clerk
Per Order of the Board

CERTIFICATION

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; Walter L. Mitchell, Esq., Mitchell Municipal Group, P.A., 25 Beacon St. East, Laconia, NH 03246; Christopher L. Boldt, Esq., Donahue, Tucker & Ciandella, PLLC, Towle House – Unit 2, 164 NH Route 25, Meredith, NH 03253; Barton Mayer, Esq., Upton & Hatfield, LLP, 10 Centre Street, P.O. Box 1090, Concord, NH 03302-1090; Steven Bolton, Esq. and Celia Leonard, Esq., City of Nashua, 229 Main Street, Nashua, NH 03061; Chairman, Board of Selectmen, Town of Dummer, 75 Hill Road, Dummer, NH 03588; and Mr. George E. Sansoucy, George E. Sansoucy, PE, LLC, 89 Reed Road, Lancaster, NH 03584.

Dated: September 18, 2020

Anne M. Stelmach, Clerk