State of New Hampshire

Board of Tax and Land Appeals

Governor Hugh J. Gallen
State Office Park
Johnson Hall
107 Pleasant Street
Concord, New Hampshire
03301-3834

In Re:

New Hampshire Electric Cooperative, Inc.

(See Attached Case List)

DECISION

The board held a consolidated hearing (over the span of nine days[1]) regarding individual tax abatement appeals on the "Property" owned by the "Taxpayer," New Hampshire Electric Cooperative, Inc. (sometimes referred to in the record as "NHEC" or "the Coop"), located in 11 "municipalities" (for tax year 2011) and 12 municipalities (for tax year 2012).[2] In these 23 appeals, the parties stipulated to the total assessment and level of assessment (median equalization ratio) in each municipality in each tax year, as summarized in the following two charts:

[1] The hearing was held on January 13-15, 20-22 and February 3-5, 2015. The board then held a consolidated hearing of 85 "PSNH Appeals" involving another electric utility: Public Service Company of New Hampshire (now doing business as Eversource Energy) and the parties agreed the board could take official notice of relevant testimony and other evidence common to both sets of appeals.

[2] The parties advised the board of settlements of appeals filed against three other municipalities [Ossipee (BTLA Docket No. 26409-11PT), Sandwich (BTLA Docket Nos. 26411-11PT and 26785-12PT) and Londonderry (BTLA Docket No. 26780-12PT)]. The Taxpayer's "Initial Trial Memorandum" (p. 3) states it filed tax abatement appeals "involving 10 other communities" in the superior courts of the following counties: Belknap (Town of Gilmanton), Carroll (Town of Tuftonboro), Grafton (Towns of Canaan, Haverhill, Lincoln, Plymouth and Rumney) and Rockingham (Towns of Chester, Deerfield and Raymond). (See also table of "superior court cases" filed with the Taxpayer's "Post-Hearing Memorandum.")

2011				
Municipality	**Docket Number**	**Total Assessment**	**Median Equalization Ratio**	**Indicated Market Value**
Andover	26401-11PT	$ 4,192,900	107.3%	$ 3,907,642
Brentwood	26402-11PT	$ 977,600	102.8%	$ 950,973
Colebrook	26403-11PT	$ 3,086,211	114.4%	$ 2,697,737
Epping	26404-11PT	$ 1,521,900	102.4%	$ 1,486,230
Grafton	26405-11PT	$ 1,708,800	99.2%	$ 1,722,581
Lempster	26406-11PT	$ 2,328,800	99.4%	$ 2,342,857
Lyme	26407-11PT	$ 2,319,200	96.5%	$ 2,403,316
New Hampton	26408-11PT	$ 2,630,200	111.5%	$ 2,358,924
Plainfield	26410-11PT	$ 1,453,800	103.3%	$ 1,407,357
Thornton	26412-11PT	$ 4,534,000	104.7%	$ 4,330,468
Unity	26413-11PT	$ 2,257,540	100.0%	$ 2,257,540
Totals (Rounded)		$ 27,011,000		$ 25,865,600

2012				
Municipality	**Docket Number**	**Total Assessment**	**Median Equalization Ratio**	**Indicated Market Value**
Andover	26775-12PT	$ 3,640,000	107.3%	$ 3,392,358
Brentwood	26776-12PT	$ 977,600	103.3%	$ 946,370
Colebrook	26777-12PT	$ 3,085,580	112.9%	$ 2,733,020
Epping	26778-12PT	$ 1,691,300	104.7%	$ 1,615,377
Grafton	26779-12PT	$ 1,489,800	102.7%	$ 1,450,633
Lyme	26781-12PT	$ 2,199,600	96.9%	$ 2,269,969
New Hampton	26782-12PT	$ 2,801,100	117.6%	$ 2,381,888
Northfield	26783-12PT	$ 3,646,400	97.3%	$ 3,747,585
Plainfield	26784-12PT	$ 1,453,800	107.8%	$ 1,348,609
Thornton	26786-12PT	$ 4,534,000	104.4%	$ 4,342,912
Unity	26787-12PT	$ 2,257,540	107.8%	$ 2,094,193
Warren	26788-12PT	$ 3,169,100	95.6%	$ 3,314,958
Totals (Rounded)		$ 30,945,800		$ 29,637,900

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment of the Property located in each municipality in each tax year was disproportionally high or unlawful, resulting in the Taxpayer paying a disproportional share of taxes. See RSA 76:16-a; 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 total assessment in each municipality in each tax year was higher than the general level of assessment. Id.

I. Arguments Presented

The Taxpayer argued each of the above assessments was disproportional because:

(1) the Taxpayer is "a non-profit, member-owned and controlled electric distribution utility" and provides "electric distribution service to approximately 80,000 members in 115 communities within a franchise area approved by the New Hampshire Public Utilities Commission [the 'PUC']" and "is the only electric cooperative in New Hampshire" (see Post-Hearing Memorandum, p. 2);

(2) the best evidence of the market value of the Property located in each municipality are the "Lagassa Appraisals" (Taxpayer Exhibit Nos. 1 – 13) prepared by George K. Lagassa, Ph.D., a licensed, qualified and experienced appraiser who properly concluded the highest and best use of the Property was "as part of an integrated electric distribution system" (Post-Hearing Memorandum, p. 35);

(3) Mr. Lagassa utilized the sales comparison, income and cost approaches to value and reconciled those value indications to arrive at credible estimates of market value of the Property located in each municipality in each tax year (summarized in Taxpayer Exhibit No. 77; see also Taxpayer Exhibit Nos. 84, 85 and 86);

(4) Mr. Lagassa's market value conclusions are corroborated by the 2011 and 2012 appraisals prepared by the department of revenue administration ("DRA") for the purposes of administering the RSA ch. 83-F statewide utility property tax [see Taxpayer Exhibit No. 14 (the "DRA Appraisals"); see also Taxpayer Exhibit Nos. 84, 85 and 86];

(5) six municipalities (Andover, Epping, Lempster, Lyme, Plainfield and Warren) now acknowledge overassessment occurred and therefore tax "refunds [are] due" for tax years 2011 and/or 2012 (cf. Taxpayer Exhibit No. 87 and the table attached to the Post-Hearing Memorandum); and

(6) the assessments in each municipality should be abated based on the market value opinions in the Lagassa Appraisals adjusted by the stipulated to level of assessment in each municipality (see Post-Hearing Memorandum, p. 53).

The municipalities argued the appealed assessments (except as noted below) were proportional because:

(1) the Lagassa Appraisals do not provide credible opinions of market value for the reasons presented at the hearing and as stated in the Defendants' Joint Post-Trial Memorandum of Law ("Joint Post-Trial Memorandum"; see pp. 17-29);

(2) the DRA Appraisals are entitled to no weight as evidence of disproportionality because each municipality has the statutory authority to establish assessments independent of the values arrived at in the DRA Appraisals and, in fact, municipalities do not receive copies of those appraisals because of the confidentiality provisions in RSA 21-J:14;[3]

[3] Only after these appeals were filed did the Taxpayer elect to waive confidentiality and provide copies of the DRA Appraisals to the municipalities' attorneys.

(3) the best evidence of the market value of the Property in each municipality are the respective appraisals and reports prepared and testified to by the municipal assessors (Gary J. Roberge of Avitar Associates of New England, Inc., Frederick H. Smith of Brett S. Purvis & Associates and George E. Sansoucy of George E. Sansoucy, P.E., LLC), who are qualified and experienced assessors of electric utility and other property in the municipalities where they provide these services;

(4) these assessors used accepted and reasonable approaches to arrive at credible estimates of market value of the Property in each municipality as they are required to by statute (RSA 72:8 and 72:9); and

(5) the Taxpayer has not met its burden of proving disproportionality and the appeals should be denied except for the municipalities and tax years shown below where the assessors arrived at market value conclusions that indicate abatements are warranted.

The parties stipulated to several basic facts for each tax year for each municipality: (1) the total assessment and level of assessment; (2) the proportionality of the assessed value of the land owned by the Taxpayer; and (3) the proportionality of any non-appealed property owned by the Taxpayer. The Taxpayer filed an Initial Trial Memorandum on January 6, 2015 (prior to the start of the consolidated hearing). On April 6, 2015, the Taxpayer filed the Post-Hearing Memorandum and the municipalities filed the Joint Post-Trial Memorandum.[4]

During the consolidated hearing (on January 20, 2015; see Transcript, "Day 4," pp. 203 - 213), the Taxpayer filed a "Motion to Take Judicial Notice" of the DRA's "Equalization

[4] Further: on April 9, 2015 the Taxpayer submitted "errata sheet[s]" to replace certain pages in the Post-Hearing Memorandum and they have been incorporated into this pleading; and on May 15, 2015 the board denied the Taxpayer's April 16, 2015 "Motion to Strike" Exhibit A to the Joint Post-Trial Memorandum.

Process" in these appeals, citing Evidence Code 201(d).[5] Certain municipalities in these appeals filed an "Objection" to this motion on February 3, 2015. The sole issue framed in these pleadings is whether the Equalization Process has any "relevance whatsoever" to the issues in these appeals. The board has jurisdiction to hear and decide equalization appeals (see RSA 71-B:5, II (a), RSA 21-J:3, XIII, and RSA 21-J:9-a, V) and is familiar with the Equalization Process. Since no prejudice will result if the board takes notice of the Equalization Process, the board granted this motion and notified the parties of this ruling on February 6, 2015.

The board's rulings on the merits of these appeals are presented below.

II. Rulings

The parties acknowledge and agree the Taxpayer has the burden of proof in each tax abatement appeal. (See, e.g., Joint Post-Trial Memorandum, p. 6; and Initial Trial Memorandum, p. 4.) Based on this proof standard, the board finds the evidence presented by the Taxpayer (in the Lagassa Appraisals and the DRA Appraisals) failed to meet its burden of proving the assessments were disproportional.

The Taxpayer pointed out, however, that in the following municipalities and tax years each municipality assessor presented evidence indicating overassessment had occurred:

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[5] See also RSA 541-A:33, V:

> (c) Generally recognized technical or scientific facts within the agency's specialized knowledge.
> (d) Codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association.

Tax Year	Municipality	Assessor	Stipulated Assessment Under Appeal	Assessed Value Indication at Hearing	Over-assessment ($)	Over-assessment (%)
2011	Andover	Roberge	$ 4,192,900	$ 3,919,700	$ 273,200	6.5%
2011	Lempster	Roberge	$ 2,328,800	$ 2,244,600	$ 84,200	3.6%
2011	Lyme	Sansoucy	$ 2,319,200	$ 1,888,833	$ 430,367	18.6%
2011	Plainfield	Roberge	$ 1,453,800	$ 1,334,300	$ 119,500	8.2%
2012	Epping	Sansoucy	$ 1,691,300	$ 1,679,478	$ 11,822	0.7%
2012	Lyme	Sansoucy	$ 2,199,600	$ 1,895,729	$ 303,871	13.8%
2012	Plainfield	Roberge	$ 1,453,800	$ 1,376,900	$ 76,900	5.3%
2012	Warren	Sansoucy	$ 3,169,100	$ 2,422,030	$ 747,070	23.6%

Sources: Taxpayer Exhibit No. 87; Joint Post-Trial Memorandum, Exhibit C; and Municipality Exhibit A, Vol. I-A, pp. 49 and 50.

The board grants the following appeals based on the acknowledgment by municipal assessor Gary Roberge that overassessment occurred, resulting in the abatements stated below:

Andover in 2011, where the assessment is abated to $3,919,700;

Lempster in 2011, where the assessment is abated to $2,244,600; and

Plainfield in 2011, where the assessment is abated to $1,334,300 and in 2012, where the assessment is abated to $1,376,900.

The board grants the following appeals because the municipal assessor, George Sansoucy, reached value conclusions reflective of a material degree of overassessment in the following municipalities, causing the board to find the following abatements are warranted:

Lyme in 2011, where the assessment is abated to $1,888,800, rounded, and in 2012, where the assessment is abated to $1,895,700, rounded; and

Warren in 2012, where the assessment is abated to $2,422,000, rounded.

For Epping in 2012, on the other hand, the board finds the slight difference (0.7%) between the assessment under appeal and the indicated assessment is not sufficient to warrant an abatement; consequently, that appeal is denied.[6]

With respect to the remaining municipalities and tax years under appeal, the board finds the Taxpayer did not meet its burden of proving disproportionality and the appeals are therefore denied. The board's more detailed findings are presented below.

A. The Taxpayer and Its Property

The Taxpayer provides electricity "distribution" services to approximately 80,000 members in 115 New Hampshire municipalities under a so-called "regulatory compact" which grants the Taxpayer a franchise to operate a monopolistic electric distribution company.[7] In return, it is required to provide electric service to all who request it and to keep its utility property in good working order. The municipalities where it is authorized to operate are in "largely rural" areas of the state, generally in central New Hampshire, and are mostly contiguous to each other. (See "Franchise Map" in Taxpayer Exhibit No. 17.) The Taxpayer does not engage in the generation of electricity and provides only incidental transmission services.

The Taxpayer is the only electric cooperative in the state (a form of 'public ownership') and traces its history back to the 1930's when the federal government began a major rural

[6] 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.

[7] 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.

electrification project. As a cooperative, it is member owned by its electric customers. The rates charged for electricity are established by the Taxpayer's member-elected board of directors (based on "cost of service principles"), rather than being set by the PUC. The parties' experts agree the Taxpayer is professionally managed and the Property is fully operational, in good condition and is well maintained.

The Property consists primarily of wooden utility poles, attachments and conduits over public and private rights-of-way, along with substations, land, buildings and other equipment located in some, but not all, of the municipalities. As reflected in Taxpayer Exhibit Nos. 90 and 91, distribution assets account for the largest component of the Property, followed by substations, structures and improvements, transmission lines and land: in 2011, for example, distribution assets accounted for almost 87% of the Property.

B. The Taxpayer's Stated Rationales For Filing These Appeals

According to the Post-Hearing Memorandum (p. 6), "NHEC's goal in bringing these appeals, as well as some pending in the superior court, was to achieve a methodology that would make sense and be fair and consistent across the board." On the issue of fairness and consistency, there is no statutory or other requirement in New Hampshire mandating the use of a uniform methodology across municipalities. Moreover, there is reason to question whether appealing in multiple forums (superior court and the board) the assessments in only a handful of the many municipalities where the Taxpayer owns property is likely to advance or hinder the goal of achieving assessment uniformity throughout the state.[8]

[8] As noted above, the Taxpayer appealed to the board the assessments in 11 municipalities in 2011 and 12 municipalities in 2012, which represents in each year less than 10% of the 115 municipalities in which the Taxpayer provides electric service.

The board heard considerable testimony regarding the complexity of assessing "multi-jurisdictional" properties and how a number of states assess utility (and other multi-jurisdictional) property at the state level using one method. That, however, is not the statutory framework in New Hampshire.[9] 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). (Cf. Joint Post-Trial Memorandum, p. 9.)

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). (See also Joint Post-Trial Memorandum, p. 6.) For this reason, simply asserting the assessment methodology is "flawed" or "poor . . . does not prove a disproportionate tax burden . . . because a taxpayer must prove that he or she is paying more than he or she ought to pay. [Citation omitted.]" (Porter, 150 N.H. at pp. 368 and 371.)

Another one of the Taxpayer's stated reasons for the filing of these appeals is the fact "the Towns' assessments increased." (Post-Hearing Memorandum, p. 5.) Mere increases from past assessments, however, are not evidence the Property is disproportionally assessed compared to other properties in the taxing district in a given year and have never been held to be a

[9] As noted in a recent article focusing on "the taxation of railroads, public utilities, and other multijurisdiction [sic] properties,... because of both size and complexity, these properties are generally valued by state agencies rather than by local assessors, and the state agencies use valuation methods that differ markedly from the methods employed at the local level." (Cornia, Gary C., David J. Carpo, and Lawrence C. Walters. "The Unit Approach to the Taxation of Railroad and Public Utility Property" in Infrastructure and Land Policies (Lincoln Institute of Land Policy, 2013) [hereinafter "The Unit Approach"] at p. 126.

sufficient reason for granting tax abatements. [See Appeal of Town of Sunapee, 126 N.H. 214 (1985).]

Moreover, to the extent the Taxpayer argues higher assessments would involve "asking its members to pay for those increases" (Post-Hearing Memorandum, p. 5), this concern is a universal one for all business taxpayers and is not a proper ground for granting tax abatements. As it is for every other taxpayer, the level and rate of change in property taxes is determined by two factors: (1) the Property's assessment; and (2) the municipality's budget. See generally International Association of Assessing Officers, Property Assessment Valuation, pp. 4-6 (1977). The board's jurisdiction is limited only to the first factor (whether or not an assessment is disproportional) and these appeals do not concern the second factor which is controlled by the municipality's budget. Cf. Bretton Woods Co. v. Town of Carroll, 84 N.H. 428, 430-31 (1930) (abatement may be granted for disproportionality but not for issues relating to town expenditures); see also Appeal of Land Acquisition, 145 N.H. 492, 494 (2000) (board's jurisdiction and authority limited by statute).

C. The Property Tax Assessment and Abatement Process

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:

> 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.

(Cf. Joint Post-Trial Memorandum, pp. 1-2.) A municipality is obligated to abate the 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 an essential touchstone 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). (See also Joint Post-Trial Memorandum, p. 7.)

D. The Appraisals and Testimony Presented

The Taxpayer relied upon the Lagassa Appraisals and Mr. Lagassa's testimony as its expert witness. He is a certified general real estate appraiser and the owner of Mainstream Appraisal Associates, LLC. (His qualifications and experience are included in each Lagassa Appraisal.) In most instances, the Lagassa Appraisals value the Property located in each municipality as of the April 1, 2011 assessment date (with an attached "update" for tax year 2012 where applicable).

As noted above, Taxpayer Exhibit No. 77 summarizes Mr. Lagassa's market value estimates for each community in each tax year and Taxpayer Exhibit Nos. 84, 85 and 86 compare his market value estimates to those in the DRA Appraisals and those of the municipal assessors (Mr. Roberge, Mr. Smith and Mr. Sansoucy, respectively). Mr. Lagassa's estimates are generally higher than those in the DRA Appraisals (cf. Taxpayer Exhibit No. 14) and substantially lower than the equalized values of the Town's assessments (approximately 50% of the aggregate values for the municipalities under appeal in 2011 and 2012).

The DRA Appraisals were prepared primarily by Scott E. Dickman, a New Hampshire certified general appraiser employed by the DRA in its Property Appraisal Division as a utility appraiser, who testified (under subpoena). (His qualifications and experience are included within each DRA Appraisal.) In its September 26, 2013 Order, the board ruled the DRA Appraisals would be admissible as evidence at the hearing on the merits and that the municipalities could conduct discovery regarding them.[10]

Mr. Dickman testified he has the responsibility to appraise annually the property owned by approximately 90 utilities that do business in this state for the purpose of the RSA ch. 83-F statewide utility property tax.[11] This is a separate and distinct tax levied at the state level on the "full and true value" of "utility property" located within the state. (See RSA 83-F:1,V; RSA 83-F:2; and RSA 83-F:3.) He stated approximately "30-35%" of the municipalities in New Hampshire utilize the allocated utility values in the DRA Appraisals [calculated primarily for the Equalization Process (pursuant to RSA 21-J:3, XIII)] for purposes of local property taxation, while the rest, like the municipalities in these appeals, rely on their own assessment methodology. When the legislature amended RSA 83-F in 2010, it made an explicit legislative finding that while RSA 83-F was to govern valuations for purposes of the utility property tax,

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[10] As noted on pages 2-8 of that Order, the board relied on its own earlier rulings in the "Portland Pipe Line" appeals and a February 13, 2013 Order issued by Judge Timothy J. Vaughan in four 2011 NHEC property tax appeals filed in Grafton County Superior Court. Further, "[a]n administrative agency is given broad discretion in determining the admissibility of evidence." Ruel v. N.H. Real Estate Appraiser Bd., 163 N.H. 34, 45 (2011). See also RSA 71-B:7 (the board is not "bound by the strict rules of evidence . . .").

[11] This volume of work, in the relevant statutory timeframes, implies Mr. Dickman can devote, on average, about one and one-half work days to each utility appraisal, including the appraisal of the Property owned by the Taxpayer. [See, generally, the cross-examination of Mr. Dickman by Attorney Boldt in the PSNH Appeals, Transcript, "Day 3," pp. 19-22.] See also New Hampshire DRA 2012 Annual Report, p. 12 [on the DRA's website], where it states the DRA (in 2011) valued "1 nuclear power plant, 11 electric companies, 8 gas companies, 14 'renewal energy' companies, 40 hydroelectric companies, 19 water and sewer companies, 12 railroads and 43 private rail cars," which had a combined valuation of $5.04 billion."

"[n]othing in this act is intended to restrict the ability of any municipality to independently assess utility property for the purpose of locally administered . . . taxes." (See Municipality Exhibit FF in the PSNH Appeals.)

The Taxpayer contends "Mr. Lagassa properly determined the market value of NHEC's property" and the "DRA Appraisals provide independent and impartial support for Mr. Lagassa's conclusions." (Post-Hearing Memorandum, pp. 36 and 40.) The municipalities sharply dispute these contentions, presenting two main arguments: (1) Mr. Lagassa's value opinions are "not credible"; and (2) the DRA Appraisals "did not provide a value of the actual assets in the Towns" in each tax year and therefore do not support or corroborate Mr. Lagassa's value opinions. (See Joint Post-Trial Memorandum, pp. 17 and 8.)

The municipalities presented evidence from the following experts, all of whom are certified New Hampshire assessors[12]:

> Mr. Roberge, CEO of Avitar Associates of New England, Inc., for the Towns of Andover, Grafton, Lempster, Plainfield and Thornton, who prepared the "Avitar Appraisals" (admitted as Municipality Exhibits B through F, respectively);
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> Mr. Smith, employed by Brett S. Purvis & Associates, for the Town of Colebrook, who prepared the "Smith Appraisal" (admitted as Municipality Exhibit G, with an addendum admitted as Municipality Exhibit J); and
>
> Mr. Sansoucy, who is also a licensed New Hampshire engineer and general certified appraiser, for seven communities (Brentwood, Epping, Lyme, New Hampton, Northfield, Unity and Warren), who prepared appraisals [the "Sansoucy Appraisals" admitted as Municipality Exhibit A (consisting of Volumes I-A, II-A, III and IV-A)].

E. Valuation Issues

The central issue in these appeals is the credibility of the appraisal evidence relied upon by the Taxpayer to prove disproportionality. Mr. Lagassa presented what he described as "four

[12] The qualifications of these assessors are contained in their respective appraisals.

approaches to value"[13] in each of his appraisals (see, e.g., Taxpayer Exhibit No. 1, p. 53) and reconciled these approaches to a market value indication for each municipality for each tax year.

In many instances (Andover, Grafton, Lempster, Lyme, New Hampton, Plainfield, Thornton, Unity in 2011; and Andover, Colebrook, Lyme, New Hampton, Plainfield and Thornton in 2012), his final value estimate equaled "net book value" (NBV). In other instances, Mr. Lagassa reconciled to a combination of the income approach and NBV (e.g., Brentwood in 2011) and a combination of the sales comparison approach and NBV (e.g., Colebrook in 2011 and 2012 and Grafton, New Hampton and Thornton in 2012). (Cf. Post-Hearing Memorandum, p. 14.) The board took note of these and other inconsistencies and does not find Mr. Lagassa's explanations for the differences to be sufficiently supported by the evidence presented, including his appraisals, direct testimony and cross-examination.

The board analyzed Mr. Lagassa's appraisal methodology and conclusions in detail and finds his appraisals do not result in credible opinions of market value and therefore do not satisfy the Taxpayer's acknowledged burden of proving the assessment in each municipality in each tax year was disproportional. The board will briefly summarize the reasons for these findings.

One fundamental difficulty with the Lagassa Appraisals concerns whether the value indications arrived at by Mr. Lagassa are consistent with his highest and best use conclusion. He concludes the Property's highest and best use was its "current use": "as a public utility as improved for the distribution of electricity as part of an integrated electric distribution system." (See, e.g., Taxpayer Exhibit No.1, p. 22; and Post-Hearing Memorandum, p. 7.) But instead of appraising the Property in a manner consistent with this highest and best use, he chose to

[13] The sales comparison and income approaches and two variations of the cost approach: ("Net Book" and "Reproduction Cost New Less Depreciation").

estimate values by considering assets located in each municipality as separate economic units, rather than recognizing their value as part of an "integrated electric distribution system."

This is reflected in his sales comparison approach, where Mr. Lagassa implicitly assumes the Property within each municipality is the economic unit that would hypothetically be sold, rather than the Property as a whole. His appraisals present only cursory information regarding 11 sales. Except for two 2010 sales, these sales occurred well before the April 1, 2011 and April 1, 2012 dates of assessment (dating back as far as 1991) and provide little probative evidence regarding the market value of the Property.

Mr. Lagassa looked at "five different market-extracted value indicators"[14] and reconciled them into a market value indication for each municipality in his sales comparison approach. He made no quantitative or qualitative adjustments to this sales data (to account for differences such as size, customer base, etc.) and did not provide detailed enough information, either in his appraisals or his testimony, that would have allowed the board to do so. (See, e.g., Transcript, "Day 3," pp. 96-97.) To reconcile these value indications, Mr. Lagassa simply calculated mathematical averages (with and without "outliers") and applied the resulting averaged indicators.[15] The board has frequently found that simple averaging "is not a conclusive method of establishing market value since averaging ignores the unique characteristics of properties. Rather, analyzing, comparing and weighing sales data and then correlating the most pertinent aspects of the sales to the Property arrives at the best indication of market value." (See, e.g., Gary Lowe v. City of Portsmouth, BTLA Docket No.: 25453-10PT (May 30, 2013), p. 4.)

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[14] The "indicators" include "Price/annual kWh sold," "annual gross income multiplier", "Price/customer", "Price/pole mile" and "Net book value multiplier." (See, e.g., Taxpayer Exhibit No. 1, pp. 33-34.)

[15] For example, he calculates the comparable sales sold with "net book multiples" ranging from 0.8 to 1.78 with an average of 1.19; after removing the high and low "outliers", the average net book multiple was 1.17. He did not analyze the data to determine if they were actual statistical outliers that should have been removed from his analysis.

Turning to Mr. Lagassa's use of the income approach, the board finds it is flawed in several respects. Proper use of the income approach requires analysis of market-based revenues and expenses. (See, e.g., Varsity Durham II, LLC v. Town of Durham, Docket Nos.: 24681-08PT/25379-09PT (March 9, 2012), pp. 5-6.) Mr. Lagassa used a three-year average of actual revenues reported by the Taxpayer rather than estimating market-based revenues, even though he understood the Taxpayer is a non-profit cooperative operated for the benefit of its members and therefore sets its electric rates to cover "costs of service" rather than to maximize revenues (to produce profits for shareholders).

The Taxpayer does not keep expense records on a town by town basis and therefore Mr. Lagassa utilized three-year, company-wide historical expenses. There was no independent analysis completed by Mr. Lagassa to determine if the expenses were reasonable, to determine if any expenses were non-recurring or why any category of expenses changed dramatically from one year to the next. Rather, he employed a simple arithmetic average (based on "the quantity of power (in kWh) sold... as a percentage of total kWh sold by NHEC system-wide and on the share of income generated there relative to NHEC as a whole," see Taxpayer Exhibit No. 1, p. 38) and then allocated a portion of the averaged expenses to each municipality. The board finds this application of an income approach is not adequate for producing a credible indication of market value.

Additionally, the weight of the evidence supports a finding that Mr. Lagassa overestimated expenses in several respects, leading to an understatement of net operating income ("NOI") to be capitalized. As a "proxy" for capital expenses, Mr. Lagassa deducted actual book "depreciation" ($9,337,218 in 2011) and "amortization" ($9,440,596 in 2011), both of which are non-cash items and are not typically included in an income approach for market valuation

purposes.[16] Based on the points brought out during cross-examination, the board finds it was unreasonable for Mr. Lagassa to include these deductions in his income approach. Focusing on Andover as an example, and assuming for the sake of argument that inclusion of book depreciation[17] (but not amortization) as an expense was appropriate (in lieu of an explicit replacement reserve, which Mr. Lagassa omitted), correction of this one error alone results in a significant increase in NOI [approximately 73% in 2011 (from $201,906 to $348,743)]. (See Taxpayer Exhibit No. 1, p. 39.)

The board further notes developing the income approach for each municipality can lead to spurious outcomes, as Mr. Lagassa himself appears to have recognized. In Northfield, for example, his calculations led to a negative NOI (minus "$100,514"); consequently, Mr. Lagassa placed no weight on the income approach and his reconciled value conclusion for the portion of the Property in Northfield is, in fact, at the high end of the range of value indications from the other three approaches he employed.[18]

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[16] The "depreciation" and "amortization" expenses are reflected on the PA-20; the "amortization" expense line is detailed as "Amortized Property Losses, Unrecoverable Plant and Regulatory Study Costs." (See Taxpayer Exhibit No. 1, Appendix 3, p. 5.) See, generally, The Appraisal of Real Estate (13th ed. 2008), pp. 392, 469 and 493; cf. Taxpayer Exhibit No. 81 (including pages from this same source).

[17] The municipalities argued Mr. Lagassa overstated the depreciation expense by relying on "book" or accounting depreciation rather than actual depreciation. The board finds merit in this argument. "The book depreciation for the improvements on a parcel of real estate is based on historical cost or another previously established figure which may have no relation to current market value." The Appraisal of Real Estate, 11th ed., (1996), p. 498. To the extent book depreciation is higher than actual physical depreciation, NOI would be higher than shown in the Lagassa Appraisals.

[18] In this appraisal, he states: "The income approach indicates a negative value, presumably as an accident of the formula used to allocate expenses to Northfield." (See Taxpayer Exhibit No. 12, p. 52.) As Mr. Lagassa used the same "formula" in the income approach in each of his appraisal, it is reasonable to question whether any flaw in his formula would impact his other appraisals as well.

Turning to Mr. Lagassa's two cost approaches, the first, NBV, is a simple arithmetic calculation of original cost less book depreciation.[19] The board finds NBV is not credible as an indication of market value. Simply put, what the Taxpayer paid for the Property (to acquire and construct) over many decades does not provide any probative evidence of its market value today. The municipalities emphasize the many problems associated with use of the "net book" (original cost less book depreciation) approach to valuing utility property for tax purposes and how these problems have been recognized by the board and the New Hampshire superior and supreme courts. See, e.g., the discussion in Upton & Hatfield's "Pretrial Memorandum" (filed in the PSNH Appeals), pp. 4-6, citing and discussing Public Service Company of New Hampshire v. New Hampton, 101 N.H. 142, 151 (1957); Public Service Company of New Hampshire v. Farmington, BTLA Docket Nos. 1281-81 and 1940-82 (February 9, 1990); and Public Service Company of New Hampshire v. Bow, Merrimack County Superior Court Docket No. 88-E-161, where the superior court noted: "The facilities in question were built over a span of years under varying conditions as to construction costs, rates of inflation, and strategic considerations of the company. A comparison based on original cost may thus be quite misleading."

Further, to the extent Mr. Lagassa argues "a buyer would not pay more for utility property than rate base," the board does not agree. (Cf. Joint Post-Trial Memorandum, pp. 17-18; and p. 8.) This argument is contradicted by the sales data presented as seven of his 11 sales sold for more than rate base (or net book value). (See, e.g., Taxpayer Exhibit No. 1, p. 32.) It is also not consistent with the "Liberty Report," prepared jointly by the PUC staff and The Liberty

[19] While such calculations may be relevant to "rate-making" for a regulated utility, the objective of the rate-making authority is not necessarily to arrive at market value conclusions but rather to set rates that balance the interests of the public and the regulated entity. In any event, the Taxpayer acknowledges it has not been "subject to full rate base regulation" by the PUC since the "early 2000's." (Post-Hearing Memorandum, p. 3.)

Consulting Group, an outside consultant, which identifies significant differences can arise between the "Net Plant" ("book") and "Asset" (market) values of various utility assets.[20]

The board heard extensive testimony and debate regarding how various regulatory bodies treat "acquisition premiums." The board is not persuaded by the Taxpayer's arguments that any such regulatory constraints would preclude a potential purchaser from paying more than "rate base" for the Property. (Cf. Post-Hearing Memorandum, pp. 3-4.) The weight of the evidence supports a conclusion that regulatory bodies can decide if a utility will be allowed to recapture an acquisition premium in its rate base, but do not typically address whether the utility can pay a premium for any assets that it acquires. (Cf. Joint Post-Trial Memorandum, pp. 26-27). Similar arguments regarding the relevance of "rate base" for property taxation were made and rejected in Public Service Company of New Hampshire v. New Hampton, 101 N.H. 142, 149-152 (1957).

In his second cost approach, "RCNLD (Reproduction Costs New Less Depreciation)," the board finds Mr. Lagassa places undue reliance on the so-called 2003 "VT Report" (Taxpayer Exhibit No. 83). The municipalities accurately noted this report was a survey "prepared by landscape architects for the purpose of examining the pros and cons of using [overhead] versus underground utilities in Vermont" and argue it should not be relied upon to estimate the Taxpayer's costs in New Hampshire for many of the reasons stated in the Joint Post-Trial Memorandum (pp. 18-21).

The board agrees with this argument as well as the weaknesses noted by the municipalities in Mr. Lagassa's computation and deduction of "economic depreciation" in his cost approaches. [Id., pp. 22-23, quoting from Southern N.H. Water Co. v. Hudson, 139 N.H.

[20] Excerpts from the Liberty Report were admitted into evidence as Municipality Exhibit X and the full report was admitted as Municipality Exhibit Z in the PSNH Appeals. (See, in particular, pp. 33 and 40-41 in Exhibit Z.)

139, 143 (2010).] Mr. Lagassa calculates a large amount of "external" or "economic" obsolescence. In Andover, for example, he deducts physical depreciation of $2.2 million (over 50% of original cost) and then further deducts "economic obsolescence" of "$1,137,708" (approximately 27% of original cost) to arrive at an RCNLD ("$2,058,700") that is below "net book value" ("$2,142,000"). [See Taxpayer Exhibit No. 1, pp. 45 and 50-54.] The municipalities justifiably question whether this methodology is proper, especially in the case of NHEC (which sets its own rates). See Joint Post-Trial Memorandum, pp. 22-23, citing Southern N.H. Water Co. v. Hudson, 139 N.H. 139, 143 (2010), noting the "perfect mathematical circularity" of such a methodology and how it could result in a "meaningless exercise," and further stating:

> If this court had meant economic depreciation to be nothing more than a way to equate reproduction cost with rate base, we would have had no reason to approve reproduction costs as a valid, independent approach.[21]

Finally, many unresolved questions remain regarding inconsistencies in Mr. Lagassa's reconciliations of these approaches for each municipality and each tax year. In some instances (Andover, Colebrook), he reconciled to NBV; in others (Brentwood), he averaged the NBV and income approach values. Further, in some instances, (Grafton, for example), he changed the multiple used in his sales comparison approach (from 1.17 in 2011 to 1.0 in 2012) without providing an adequate explanation for doing so. The board finds it is unlikely that a knowledgeable buyer would value electric distribution assets in separate municipalities using differing valuation and reconciliation methodologies.

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[21] In Southern, the supreme court affirmed the trial court's decision to apply only 10% for "economic depreciation," rather than the higher rate advocated by the utility.

The board considered the Taxpayer's arguments in the Post-Hearing Memorandum (pp. 40-45) that the DRA Appraisals provide "independent and impartial support" for the value conclusions in the Lagassa Appraisals, but does not agree. The DRA Appraisals utilize the cost and income approaches to value, but not the sales comparison approach. (See Taxpayer Exhibit No. 14, p. 28 in the 2011 appraisal and p. 29 in the 2012 appraisal.)

The DRA Appraisals apply a "unit method" (what Mr. Dickman described as a "top/down approach") to arrive at a single opinion of value for all utility property owned by the Taxpayer. This is evident from page 7 of each DRA Appraisal, which states: "This is an appraisal of an integrated property as a whole without any reference to the value of its component parts . . . ." The board finds there is only a single opinion of market value in each DRA Appraisal, a number estimating the value of all utility property owned by the Taxpayer, irrespective of where it is located, and then, using historical cost as the basis, allocating this value to each municipality. (Id., pp. 34-39 in each appraisal.)

The DRA Appraisals contain no descriptions of the actual utility property being appraised, which is contradictory to the "Appraising Utilities" factsheet published on DRA's website Mr. Dickman referenced in his testimony. (See Transcript, "Day 4," pp. 99 and 135.) That factsheet, a "template" prepared by him, states, "The first step in ANY valuation process is the development of a clear understanding of the appraisal assignment. Without exception, this involves identifying the specific characteristics of the appraised property, such as the nature of the improvements, accompanying property rights, etc." (Cf., p. 7 in the 2011 and 2012 DRA Appraisals, which states identification is one of the "three steps" needed to apply the unit method.) Nonetheless, during his testimony, Mr. Dickman could not answer questions regarding

specific assets owned by the Taxpayer (land, substations and other improvements) in any municipality.

The municipalities note Mr. Dickman did not inspect the Property and did not receive an "inventory" of assets owned in each municipality from the Taxpayer, but instead simply relied upon aggregate information provided to him by the Taxpayer in the PA-20 filings required for purposes of RSA 83-F. (See, e.g., Taxpayer Exhibit No. 1, Appendix 3, pp. 2-22.) They further note he could not explain differences between the cost numbers the Taxpayer reported to the DRA in these PA-20 filings and the cost numbers provided to Mr. Lagassa. (Joint Post-Trial Memorandum, pp. 10-11.) Additionally, Mr. Dickman testified some figures in the DRA Appraisals may not exactly coincide with the figures on the PA-20 because the Taxpayer submits an "electronic spreadsheet" which Mr. Dickman then used to "populate[]" his "model," noting he does not rely on the PA-20 form itself. (See Transcript, "Day 4," p. 110.) This practice raises further doubts regarding the reliability of the DRA Appraisals.

Further complications arise because the "original costs" for distribution property provided by NHEC are not the specific costs incurred in any particular municipality, but are instead the average cost of distribution assets (because of NHEC's use of "mass average" accounting.) Additionally, original costs do not include contributions in aid of construction ("CIAC") and may not include assets still in service that have been fully "book" depreciated. (See Joint Trial Memorandum, pp. 11-12, citing Southern, 139 N.H. at 142.) Mr. Dickman acknowledged CIAC is "meaningful" to the valuation process and he "missed" the fact the Taxpayer was "reporting zero CIAC to me for most years" and he should have followed up on this "omission." (See, e.g., Transcript, "Day 3," p. 152-53.) Since he did not include any

contributory value for CIAC in his cost approach, this raises further doubts as to the reliability of his value estimate.

It is noteworthy that the "reconciliations" in the DRA Appraisals apply shifting weights to each approach: in 2011, 90% to the income approach and 10% to the cost approach; and in 2012, 80% to the income approach and 20% to the cost approach. No credible explanation was offered as to why the weightings shifted between these two tax years.[22] (Joint Post-Trial Memorandum, pp. 13-14.)

In addition, the portion of the total value assigned to each municipality in these appraisals (to fulfill the DRA's equalization responsibilities) is simply an arithmetic allocation of the overall unit value (based on historical cost), not the independent opinion of market value of a professional appraiser or assessor that can meaningfully be used to corroborate or rebut the conclusions contained in the Lagassa Appraisals. As noted in a recent treatise, "It is important to understand that allocation is an *assignment* of value rather than a *determination* of value." (The Unit Approach, p. 145.)

As the municipalities correctly argue, the "requirements of RSA 72:9 are not met" when such an approach is followed. (See Joint Post-Trial Memorandum, pp. 14-17.) Along with citing RSA 72:8, quoted above, the municipalities state:

> The legislature recognized the difficulty of determining the value of assets in one town when they are part of an integrated system which is located within multiple towns, and specifically provided that utility property 'shall be taxed in each town according to the value of that part lying within its limits.' RSA 72:9 (emphasis added). . . .
>
> The assessed value cannot exclude value which is attributable to the property within the town and cannot include value which is attributable to property not located in the

[22] The board noted these weightings differ dramatically from those in the DRA Appraisals presented in the PSNH Appeals. The weightings for PSNH are: 10% to the income approach and 90% to the cost approach in 2011; and 5% to the income approach and 95% to the cost approach in 2012. There is no discernible explanation for why the weightings differ to this extent between electric utilities and tax years.

> assessing town. PSNH v. Bow, 139 N.H. 105, 107 (1994).[23] NHEC bears the burden of establishing that the fair market value which it asserted at trial captures all of the value of the property in each town and does not include value which is attributable to property which is located in other municipalities.

(Joint Post-Trial Memorandum, pp. 1-2 and 7.) The board agrees.

In addition to these substantive problems in both the Lagassa Appraisals and the DRA Appraisals, such as use of revenue and expense averaging and deduction of both book depreciation and amortization expenses in using the income approach, the board noted an additional problem in the DRA Appraisals which involves a large deduction made by Mr. Dickman for "Income Taxes" ($6,223,045 in 2011 and $6,036,432 in 2012; see Taxpayer Exhibit No. 14, p. 18 of each DRA Appraisal). No explanation is provided in the DRA Appraisals as to where the income tax expense numbers came from or how they were calculated; they were not reported to the DRA on the Taxpayer's PA-20 forms or on their own audited financial statements. (See Taxpayer Exhibit No. 80, p. 10.) [Further, Mr. Dickman lists income tax expenses on page 15 of each DRA Appraisal, a page entitled "Restatement of Actual Revenue and Expenses provided by Taxpayer," but the amounts stated differ, without explanation, from year to year: compare the 2010 income taxes reported in the 2011 DRA Appraisal ($6,081,840) and the 2012 DRA Appraisal ($6,023,708).]

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[23] The supreme court in Bow specifically noted:

> The trial court found several weaknesses in the unit method. Because the unit method valued the entire PSNH system as a whole and then allocated a portion of that value to each component property based on its net book cost, it failed to focus on the income contribution of the particular property and included the effects of property outside the taxing jurisdiction. Additionally, we have previously noted that "changing price levels would render such a method impractical and unfair." Public Service Co. v. New Hampton, 101 N.H. 142, 151, 136 A.2d 591, 598 (1957). The court therefore determined that the unit method was "an unreliable means of evaluating specific property." We find ample evidence in the record to support the trial court's rejection of PSNH's valuation method.

The Post Hearing Memorandum (p. 16) discusses Mr. Dickman's testimony that "capitalization rates extracted from the market are after-tax" and an appraiser must be careful to match "after-tax income" to an "after-tax" capitalization rate. There is no evidence before the board that would allow it to find Mr. Dickman extracted any capitalization rates from the market; in fact, there is no evidence Mr. Dickman analyzed any sales from which a capitalization rate could possibly be extracted from.

The board recognizes a potential buyer of the Property may or may not be tax exempt. Consistent with the "maximally productive" prong of the highest and best use analysis, however, Mr. Dickman, like Mr. Lagassa, should have considered the Taxpayer as a potential buyer of the Property, but neither did so. [See, generally, Public Service of New Hampshire v. New Hampton, 101 N.H. 142, 146-147 (1957) (determination of market value should not exclude the taxpayer itself as a potential buyer), cited in Joint Post-Trial Memorandum, p. 4.]

Using Mr. Dickman's numbers and methodology, but correcting the specific flaws noted above, results in a dramatic increase in the market value of the Taxpayer's utility assets. Specifically, if the board accepts as valid the depreciation expense estimates but excludes amortization (as previously discussed regarding the Lagassa Appraisals) and income tax, the estimated market value in the DRA Appraisals would increase approximately 62% (from $109,653,062 to approximately $178,000,000 for 2011; and the extent of increase would be similar for 2012).[24] If the market value of the Taxpayer's utility assets in New Hampshire are understated in the DRA Appraisals, then any resulting allocation to each municipality will also be understated.

[24] Using Mr. Dickman's own methodology, correction of the specific items noted above would obviate the need for the "functional/external depreciation" adjustment because this adjustment resulted largely from the understated NOI.

As noted above, Mr. Dickman testified approximately "30-35%" of the municipalities in New Hampshire use the value shown in the DRA Appraisals for local ad valorem tax assessing purposes. To briefly summarize the process, once the DRA completes each annual utility appraisal, as it is statutorily charged to do pursuant to RSA 83-F, it provides a copy to the utility and publishes a list of the utility values on its website. As noted above, the DRA does not provide the actual utility appraisal report to any municipality or anyone else, citing the confidentiality constraints in RSA 21-J:14.

The board has concerns regarding whether use of a mere allocation calculated in an undisclosed appraisal, without any opportunity to examine, review or verify the information contained within it, is sufficient to satisfy the selectmen's obligations under RSA 75:1. This statute obligates the selectmen to assess:

> all... taxable property at its market value. Market value means the property's full and true value as the same would be appraised in payment of a just debt due from a solvent debtor. The selectmen shall receive and consider all evidence that may be submitted to them relative to the value of property, the value of which cannot be determined by personal examination.

The board has written repeatedly on why the assessing process should be transparent and understandable to the taxpayers in each municipality. As noted in Town of Orford, BTLA Docket No. 21473-05RA (November 3, 2005), p. 15:

> The authority to assess property has been delegated by the legislature to selectmen/assessors. This delegation entrusts this important function to a select few. Regardless of whether those elected or appointed officials perform the function or it is contracted to the private sector, those who carry out this function should document their analysis so that those who shoulder the burden, the taxpayers, can understand it. Such clear documentation is necessary to open the "black box" of any CAMA system so that taxpayers can follow the road map of how their assessments are linked to the market data analyzed by municipalities or its contract assessing firms. Mere statements, as contained in the Revaluation Manual, that the analysis was performed are not adequate; that analysis must be shown.

In a similar vein, the 2006 Chapter 193:1 legislative findings and intent [with respect to RSA 21-J:14-b, I(c)] noted the following.

> Documentation of the analysis of market data used to set values are (sic) needed by the governing body and the taxpayers in the state of New Hampshire. The general court also finds that documentation, assumptions, and calculations shall be transparent for our citizens....

See In re: Town of Barrington Reassessment, BTLA Docket No. 22551-07RA (January 8, 2008), p. 3. It is difficult to understand how sole reliance on the allocated values (from DRA appraisals prepared for the purpose of administering the RSA 83-F utility tax) for local assessing purposes is dissimilar to the use of a "black box," which is contrary to the legislative intent stated above.

The Taxpayer noted the municipalities have not challenged the DRA's use of the values estimated by Mr. Dickman in the DRA Appraisals for equalization purposes even though, in many instances, his values are lower than the assessed values in the municipalities. The board places no probative weight on this argument as proof of disproportionality. The municipalities were under no obligation to undertake what would likely have been an expensive and time-consuming process of challenging each equalized value determination by the DRA. [See, e.g., Appeal of Coos County Commissioners, 166 N.H. 379 (2014).]

The board has reviewed the many criticisms leveled at the assessment methodologies used by the municipal assessors (see Post-Hearing Memorandum, pp. 19-29), as well as the municipalities' responses to those criticisms (see Joint Post-Trial Memorandum, pp. 30-40). The board need not address these points here, however, because challenges based on assessment methodology do not, and cannot, carry the Taxpayer's burden of proving disproportionality. (See discussion above, especially in Section II.B, regarding the standard of proof in tax abatement appeals.)

F. Summary and Conclusions

The board finds merit in many of the municipalities' arguments regarding why the Taxpayer did not meet its burden of proving disproportionality of each local assessment by relying on the Lagassa Appraisals and the DRA Appraisals. As noted in the Joint Post-Trial Memorandum (p. 41) "both advocate for values in the towns which are not based on the actual property in the towns, and both present opinions of market values that are well below NHEC's net book [value]." On balance, the board finds these appraisals fail to establish the Taxpayer's entitlement to tax abatements.

As noted above (see pp. 6-7), however, based on the appraisal and other evidence presented by the municipalities themselves, the board grants the Andover, Lyme, Lempster and Plainfield 2011 appeals and the Plainfield and Warren 2012 appeals and denies all of the remaining appeals. If the taxes have been paid, the amount paid on the value in excess of the abated assessments for Andover, Lyme, Lempster, Plainfield and Warren for these tax years shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively "rehearing motion") within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; Tax 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; Tax 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very

limited circumstances as stated in board rule Tax 201.37(g). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun

Michele E. LeBrun, Chairman

Albert F. Shamash

Albert F. Shamash, Member

Theresa M. Walker

Theresa M. Walker, Member

NH ELECTRIC COOP CERTIFICATION FOR TAX YEAR 2011

I hereby certify a copy of the foregoing Order has this date been mailed, electronically and postage prepaid, to: Margaret H. Nelson, Esq., Sulloway & Hollis, 9 Capitol Street, Concord, NH 03301, Taxpayer representative; Walter L. Mitchell, Esq. and Judith E. Whitelaw, Esq., Mitchell Municipal Group, P.A., 25 Beacon St. East, Laconia, NH 03246; Shawn M. Tanguay, Esq., Gardner, Fulton & Waugh, PLLC, 78 Bank Street, Lebanon, NH 03766; Mr. George E. Sansoucy and Mr. Brian D. Fogg, George E. Sansoucy, PE, LLC, 89 Reed Road, Lancaster, NH 03584; Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258; Brett S. Purvis & Associates, Inc., c/o Allison Purvis, 1195 Acton Ridge Road, Acton, ME 04001; Chairman, Board of Selectmen, PO Box 61, Andover, NH 03216; Chairman, Board of Selectmen, 1 Dalton Road, Brentwood, NH 03833; Chairman, Board of Selectmen, 17 Bridge Street, Colebrook, NH 03576; Chairman, Board of Selectmen, 157 Main Street, Epping, NH 03042; Chairman, Board of Selectmen, PO Box 299, Grafton, NH 03240; Chairman, Board of Selectmen, PO Box 33, East Lempster, NH 03605; Chairman, Board of Selectmen, PO Box 126, Lyme, NH 03768; Chairman, Board of Selectmen, 6 Pinnacle Hill Road, New Hampton, NH 03256; Chairman, Board of Selectmen, PO Box 380, Meriden, NH 03770; Chairman, Board of Selectmen, 16 Merrill Access Road, Thornton, NH 03285; and Chairman, Board of Selectmen, Town of Unity - 13 Center Road #1, Charlestown, NH 03603-7500.

NH ELECTRIC COOP CERTIFICATION FOR TAX YEAR 2012

I hereby certify a copy of the foregoing Order has this date been mailed, electronically and postage prepaid, to: Margaret H. Nelson, Esq., Sulloway & Hollis, 9 Capitol Street, Concord, NH 03301, Taxpayer representative; Walter L. Mitchell, Esq. and Judith E. Whitelaw, Esq., Mitchell Municipal Group, P.A., 25 Beacon St. East, Laconia, NH 03246; Shawn M. Tanguay, Esq., Gardner, Fulton & Waugh, PLLC, 78 Bank Street, Lebanon, NH 03766; Mr. George E. Sansoucy and Mr. Brian D. Fogg, George E. Sansoucy, PE, LLC, 89 Reed Road, Lancaster, NH 03584; Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258; Brett S. Purvis & Associates, Inc., c/o Allison Purvis, 1195 Acton Ridge Road, Acton, ME 04001; Chairman, Board of Selectmen, PO Box 61, Andover, NH 03216; Chairman, Board of Selectmen, 1 Dalton Road, Brentwood, NH 03833; Chairman, Board of Selectmen, 17 Bridge Street, Colebrook, NH 03576; Chairman, Board of Selectmen, 157 Main Street, Epping, NH 03042; Chairman, Board of Selectmen, PO Box 299, Grafton, NH 03240; Chairman, Board of Selectmen, PO Box 126, Lyme, NH 03768; Chairman, Board of Selectmen, 6 Pinnacle Hill Road, New Hampton, NH 03256; Chairman, Board of Selectmen, 21 Summer Street, Northfield, NH 03276; Chairman, Board of Selectmen, PO Box 380, Meriden, NH 03770; Chairman, Board of Selectmen, 16 Merrill Access Road, Thornton, NH 03285; Chairman, Board of Selectmen, Town of Unity - 13 Center Road #1, Charlestown, NH 03603-7500; and Chairman, Board of Selectmen, PO Box 40, Warren, NH 03279.

Dated: July 2, 2015

Anne M. Stelmach, Clerk