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THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY, MONTANA

PUGET SOUND ENERGY, INC.,)	Cause No. _____
)	
Petitioner,)	Judge: _____
)	
vs.)	
)	PETITION FOR
STATE OF MONTANA, DEPARTMENT OF)	JUDICIAL REVIEW
REVENUE, and STATE TAX APPEAL)	
BOARD)	
)	
Respondents.)	

Puget Sound Energy, Inc. (“PSE”), by and through its counsel of record seeks judicial review pursuant to § 15-2-303, MCA, of decisions of the Montana Department of Revenue (“Department”) and the State Tax Appeal Board (“Board”). In support of its Petition, PSE states as follows:

1. Jurisdiction is proper in this Court pursuant to § 15-2-303, MCA.
2. Venue is proper in this Court pursuant to § 15-2-303(2), MCA, because PSE has taxable property in Yellowstone County.

3. Pursuant to § 2-15-1301, MCA, the Department is an executive branch agency of the State of Montana. The Department is charged with valuing all taxable property in Montana.

4. Pursuant to § 15-2-101, et seq., MCA, the Board is an independent appeal board of the State of Montana allocated to the Department of Administration for administrative purposes only. The Board is charged, in part, with hearing direct appeals of the Department's final decisions in centrally assessed property assessments.

5. PSE seeks review of the Board's decision to increase PSE's unit value in PSE's appeal of centrally assessed property valuations for tax years 2005, 2006 and 2007.

6. The Board's original Findings of Fact and Principles of Law, Conclusions of Law and Board Discussion, Order and Opportunity for Judicial Review was dated June 16, 2009. On July 17, 2009, the Board granted the Department's motion to alter or amend judgment, and issued its Amended Findings of Fact and Principles of Law, Conclusions of Law and Board Discussion, Order and Opportunity for Judicial Review ("Order," a copy of which is attached as Exhibit A). The Order was the Board's final decision.

FACTUAL AND PROCEDURAL BACKGROUND

7. PSE is a regulated electric and gas service company with customers in the Puget Sound region of the State of Washington. PSE does not have any customers in Montana.

8. PSE owns an interest in all four units of the Colstrip generating plant and the associated transmission lines.

9. The Department centrally assesses PSE's property. PSE timely appealed the Department's appraisals to the Board for tax years 2005, 2006, and 2007.

10. The Board conducted a hearing on PSE's appeals from September 29 through October 8, 2008.

11. PSE sought a reduction in the value of its property. The Department sought to have its valuations upheld.

12. PSE presented lay and expert testimony. The Department presented expert testimony.

13. The Department appraises PSE's property using a unit valuation method. Under unit valuation all the operating property of a taxpayer, wherever located, is appraised as a single unit. The Department generally calculates several different indicators of value and then correlates those indicators into a single value known as the correlated unit value. The Department then allocates the correlated unit value among the states in which PSE has property by applying a mathematical allocation formula. After allocating a portion of the correlated unit value to Montana, the Department makes further adjustments to arrive at a value to be distributed to the taxing jurisdictions. In this case, the Board agreed the Department made errors at all three steps in the process.

14. The Board refused to allow the Department a presumption of correctness, and rejected the Department's appraisals for all three years. In its Order, the Board concluded that the Department's appraisals for 2005 and 2006 "failed to meet even a minimum standard required to demonstrate the Department should be granted the presumption of correctness." The Board also noted that the Department's deficiencies caused "the Board to be unwilling to rely on the Department's appraiser judgment to determine whether the 2007 opinion of value is reliable."

15. The Board also determined that the Department failed to correctly calculate the allocation factor.

16. The Board also determined that the Department's treatment of PSE's taxable possessory interest in transmission lines owned by the Bonneville Power Administration ("BPA lines") was erroneous. The Board determined the value of the BPA lines is already in the Department's income and market indicators of value, so making an additional adjustment to increase the Montana allocated value is inappropriate. The Board determined that the proper treatment of the BPA lines is to make appropriate adjustments to the cost approach used in the calculation of the correlated unit value and removing the BPA lines as an additional adjustment to the Montana allocated value.

17. The Board correctly noted that the Department failed to fully consider all forms of obsolescence affecting PSE's property.

18. In recognition of the Department's errors, the Board determined its own unit value of PSE's property. However, the Board relied exclusively on the appraisals of the Department's expert Brent Eyre. The Board failed to address any of PSE's criticisms of, or even the admitted errors in, Eyre's appraisals.

19. The Board relied on Eyre's appraisals to improperly increase the correlated unit values of PSE's for all three years. The Board increased PSE's unit values by 6.47% for 2005, 5.72% for 2006 and 4.25% for 2007.

20. The Board failed to consider the appropriateness of Eyre's indicators of value in light of Montana's intangible personal property exemption and Montana's statutory requirement to deduct all forms of obsolescence.

RELIEF SOUGHT

21. PSE seeks to have the Board's decision reversed and remanded for a redetermination of the fair market value of PSE's property in compliance with the requirements of law.

BASIS FOR RELIEF

22. The Board exceeded its authority when it increased PSE's unit value above the value originally determined by the Department and sought in this proceeding. The Board's decision to increase PSE's unit value violated PSE's statutory and constitutional rights.

23. The Board erred in relying on Eyre's appraisals because they contain errors, including, but not limited to:

- A. Failure to adjust the cost approach for all forms of obsolescence;
- B. Use of a direct capitalization method that inappropriately includes nontaxable intangible values, and violates appraisal theory and accepted practices;
- C. Use of a discounted cash flow methodology that relies on post lien date information, includes nontaxable assets and assets that did not exist on the lien date, and violates appraisal theory and accepted practices; and
- D. Use of a stock and debt indicator of value that includes nontaxable assets and assets that did not exist on the lien date and violates appraisal theory and accepted practices.

24. The Board erred in failing to consider appropriate reductions to Mr. Eyre's appraisals for nontaxable intangible personal property and assets not yet in existence.

25. The Board erred in rejecting the appraisals of PSE's appraiser, Dr. John Davis.

26. The Board erred in rejecting the obsolescence calculations conducted by PSE's obsolescence experts, Drs. Gary Cornia and Lawrence Walters.

27. The Board erred in failing to consider all forms of obsolescence.

28. The Board erred in relying on valuation methods that inappropriately include nontaxable intangible values, and violate appraisal theory and accepted practices, including, but not limited to, the direct capitalization approach using earnings to stock market earnings to price ratios and the stock and debt approach.

WHEREFORE, pursuant to § 15-2-303, MCA, PSE requests the following relief:

1. Judicial review of the Board's Order;
 2. To the extent necessary, judicial review of the Department's appraisals;
 3. An order reversing the Board's Order, and ordering the Board to reduce PSE's unit value using an approach consistent with the appraisals of Dr. John Davis;
- and
4. All other just and equitable relief.

DATED this 5th day of August, 2009.

CROWLEY FLECK PLLP

Michael Green
Attorneys for Puget Sound Energy, Inc.

CERTIFICATE OF SERVICE

I, Michael Green, attorney for Puget Sound Energy, Inc., hereby certify that on August 5, 2009, I mailed a true and correct copy of the foregoing Petition for Judicial Review, postage prepaid, to the following:

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