BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

NORTHWESTERN CORPORATION, Appellant, v. THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA, Respondent	)	DOCKET NO.: SPT-2006-1 FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER and OPPORTUNITY FOR JUDICIAL REVIEW

This matter came before the Montana State Tax Appeal Board (Board) for formal hearing on February 5 through February 9, 2007, in Helena, Montana. Brand G. Boyar represented NorthWestern Corporation (NorthWestern). C.A. Daw and Michele Crepeau represented the Department of Revenue (DOR or Department).

Testimony was presented, exhibits received, and proposed findings and conclusions were submitted. The duty of this Board is to determine the appropriate market value for the subject property based upon a preponderance of the evidence. The Board having fully considered the testimony, exhibits, and submissions, hereby finds and concludes as follows.

STATEMENT OF ISSUE

The issue before this Board is whether the Department determined an appropriate market value for NorthWestern's taxable property in Montana for ad valorem property tax purposes as of January 1, 2005. Five specific questions are at issue.

First, was it proper for the Department to value a unit comprised of NorthWestern's entire corporate entity instead of valuing only NorthWestern's Montana property?

Second, did the Department properly remove intangible personal property from the assessment?

Third, did the Department properly calculate the indicators of value for purposes of assessment?

Fourth, did the Department allocate an appropriate amount of NorthWestern's total value to Montana?

Finally, is NorthWestern properly awarded attorney's fees and costs in this matter?

FINDINGS OF FACT AND PRINCIPLES OF LAW

1. Due, proper, and sufficient notice was given of this matter and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. NorthWestern's property in Montana is described as follows:

> A regulated electric transmission and distribution system, a regulated natural gas storage, transmission and distribution operation, and an unregulated electric operation (NorthWestern's leased interest in the Colstrip Unit 4, a coal-fired power generating plant). (Exh. 2, p. 6-7).

3. NorthWestern was incorporated in 1923 and acquired the electric and natural gas transmission and distribution business of the Montana Power Company in February 2002. (Exh. 2, p. 6).

4. NorthWestern operates its business in South Dakota, Nebraska and Montana. The company's executive functions are located at their headquarters in Sioux Falls, South Dakota. The majority of the company's operations activities are located in Butte, Montana. (Exh. 2, p. 6; Bird, day 3, pp. 79, 82-83; Exh. N, pp. 4-5).

5. The majority of staff in the South Dakota office provides services across the NorthWestern system, including the Montana portion of the company. (Bird, day 3, p. 80). NorthWestern has no separate subsidiary to oversee its assets located in Montana. (Wilson, day 4, p. 15).

6. NorthWestern has consolidated debt of approximately $225 million in secured debt and a $200 million revolving line of credit. (FERC Form 1, p. 109.1; Wilson, day 4, p. 18; Bird, day 3, p. 78).

7. In its three-state area, NorthWestern operates regulated electric transmission and distribution systems, regulated natural gas operations consisting of storage, transmission and distribution, and unregulated electric and natural gas operations. (Exh. 2, pp. 7, 12-13, and 15).

8. In Montana, NorthWestern owns and operates a regulated electric transmission and distribution network which covers approximately 107,600 square miles and 310,000 customers as of December 2004. (Exh. 2, p. 7).

9. NorthWestern's Montana electric transmission lines are both directly and indirectly connected to NorthWestern property in other states. For example, the Montana transmission lines connect with lines owned by Basin Electric in North Dakota, and then are interconnected to NorthWestern lines in South Dakota. (Wilson, day 4, p. 17). In addition, NorthWestern transmission lines cross the Montana-Wyoming border to provide electricity to Yellowstone National Park. (Kasperick, day 1, p. 73; Wilson, day 4, p. 18).

10. In Montana, NorthWestern's unregulated electric operations include the lease of a portion of Colstrip Unit 4, a 750 megawatt gross capacity coal-fired power plant in southeastern Montana. (Exh. 2, p. 12).

11. As a utility company, NorthWestern operates under the jurisdiction of and files regular financial reports with the Securities and Exchange Commission (SEC) and the Federal Energy Regulatory Commission (FERC). NorthWestern is also regulated by and files financial reports with the Montana Public Service Commission (Montana PSC) and other state public service commissions. (Exh. 2, pp. 6, 15-22).

12. The energy regulatory agencies have authority to set rates for the sale of regulated energy. Rate regulation affects the earnings potential and the value of the utility company. (*See e.g.,* Exh. 5, p.14-15; Exh. 38.)

13. NorthWestern filed for bankruptcy on September 14, 2003, and emerged from bankruptcy on November 1, 2004, under a Plan of Reorganization (Plan). (Exh. 2, p. 6).

14. NorthWestern's Plan included the application of fresh-start reporting. Under fresh-start reporting, a new reporting entity is created and the company's assets and liabilities are adjusted to reflect their estimated fair values. Any value that exceeds the sum of the assets and liabilities is designated a utility plant adjustment, a form of goodwill. (Exh. 1, pp. 123.2-123.3; Kliewer, day 1, pp. 25-26).

Appeal Process

15. The lien date for valuation in this case is January 1, 2005. (Exh. 38, p. 1).

16. For the 2005 tax year, the DOR centrally assessed the operating properties of NorthWestern through the unit method of valuation pursuant to § 15-6-156; § 15-23-101, MCA, *et seq*; and Rule 42.22.102, ARM, *et seq*.

17. On May 23, 2005, the DOR issued its preliminary appraisal. (Exh. 37, p. 3).

18. NorthWestern requested an informal review of the preliminary appraisal.

Following an informal hearing and consideration of NorthWestern's oral and written communications, the DOR issued its final revised appraisal on September 20, 2005. (Exh. 38).

19. On March 1, 2006, NorthWestern filed an appeal of the DOR's 2005 appraisal and a hearing was subsequently held in this matter.

Department of Revenue Valuation

20. Kory Hofland, Unit Manager of the Business Tax and Valuation Bureau's Centrally Assessed and Industrial Properties Unit and appraiser for the Department, performed the final appraisal for the Department. (Hofland, day 2, p. 82; Exh. 38).

21. The Department's appraisal used five different value indicators. The values determined for each indicator were:

Value Indicators	Before I.P.P.*	After I.P.P.*
Original Cost Less Depreciation	$1,763,232,280	$1,384,496,385
Direct Capitalization of Net Operating Income	1,772,241,306	1,595,017,175
Direct Capitalization of Gross Cash Flow	1,416,027,508	1,274,424,757
Yield Capitalization of Cash Flows	1,722,660,067	1,550,394,060
Stock & Debt Approach	2,021,201,291	1,819,081,161

*I.P.P. Intangible Personal Property (10% Exemption) (Exh. 38, p. 6).

22. In correlating these indicators of value, the Department gave the cost approach, the direct capitalization of net operating income approach and the yield capitalization of cash flows approach equal weight (33 percent each). The Department placed no weight on the stock and debt approach and gave the direct capitalization of gross cash flow approach a weight of one percent. (Hofland, day 3, p. 167).

23. The cost approach utilized data from the FERC Form 1 to determine a cost-based value of NorthWestern's assets. (Hofland, day 3, p. 116). The Department changed the amount of intangible personal property deducted from the cost approach in preparing

the final appraisal report. Due to an oversight when these changes were made, depreciation in the cost approach was overstated in the final report. If depreciation had been calculated accurately, the value for the OCLD indicator would have totaled $1.91 billion before the deduction for intangible personal property. (Hofland, day 3, p. 120-121).

24. The Department used historical data from the FERC Form 1 to calculate the income stream used in their income approaches. The Department prefers to use income projections from the taxpayer in calculating their income approaches but could not because NorthWestern did not provide projections, although the company had completed their 2005 budget projections before the end of 2004. (Hofland, day 3, pp. 121-122; Exh. 38, p. 8; Exh. L).

25. For both the direct and yield capitalization approaches, the Department used standard capitalization rates developed for the electric utility industry in the Department's annual capitalization rate study. The Department applied those rates to each of the centrally assessed companies in the electric utility industry, including NorthWestern. (Hofland, day 3, pp. 109-110; Exh. B).

26. The Department's final correlated unit value totaled $1.507 billion after the deduction for intangible personal property. The Department applied an allocation factor of 79.1 percent to this amount to derive a Montana allocated value of $1.192 billion. (Exh. 38, p. 6).

27. DOR then made several adjustments for deductions and exemptions that totaled <$60,133,319>. DOR also added $6,785,239 to account for the use of certain Bonneville Power Administration (BPA) Transmission Lines. The final Montana value set

by the DOR was $1,139,080,688 ($1,192,428,769 minus $60,133,319 plus $6,785,239). (Exh. 38, p. 6).

28. In July 2005, NorthWestern asked the Department to correct the 2003 depreciation and amortization figure used in DOR's income normalization calculations. Similarly, NorthWestern submitted corrections to the 2003 and 2004 amounts for capital expenditures. (Exh. 28, p. NW 00111). The Department did not make these corrections in its 2005 appraisal but did use NorthWestern's figures in a subsequent appraisal. (Exh. 38, p. 8; Exh. 40, p. 9; Hofland, day 2, pp. 155-156). If made, these changes would reduce the amount of income to be capitalized and decrease the final valuation. (Hofland, day 2, pp. 116, 146-147).

29. During the hearing, the Department corrected the capitalization rate they had used for debt in the yield capitalization approach. The correction changed the debt capitalization rate from 7.23 percent to 6.09 percent. As a result, the assumed capitalization rate was reduced from 8.00 percent to 7.5 percent. A lower capitalization rate increases value. (Hofland, day 3, pp. 128-131).

Intangible Personal Property

30. In the market and income approaches to value, the Department deducted the default ten percent minimum for intangible personal property specified for electric utilities in the Department's administrative rules. (Exh. 38, p. 17).

31. In the final appraisal, the Department exempted from the cost approach a larger amount for intangible personal property, $378,735,895, based on information provided by NorthWestern. NorthWestern reported this amount as an acquisition adjustment; it is

goodwill that resulted from the 2002 acquisition of the Montana Power Company operations. (Exh. 38, p. 17; Exh. 1, pp. 123.4, 200).

32. NorthWestern also reported an additional $59.4 million as a utility plant adjustment and, in July 2005, asked the Department to deduct the total $435.1 million ($378.7 million plus $59.4 million) as intangible personal property from each indicator of value. The $59.4 million utility plant adjustment represents the amount by which the company's enterprise value exceeded the sum of the amounts assigned to assets and liabilities under fresh-start reporting principles. (Exh. 1, pp. 123.2, 123.3, 123.9; Exh. 28, NW 00109-00110).

33. The Department did not deduct the $59.4 million utility plant adjustment as intangible personal property from any indicator of value. Specifically, the Department did not deduct this amount from its cost indicator because it had not been included in the "Plant in Service" amount which served as the basis for the DOR's cost approach. (Hofland, day 3, pp. 116-119; Demonstrative Exhibit B).

Allocation Factors

34. To determine the Montana portion of NorthWestern's value, the Department used an allocation factor derived by dividing data NorthWestern reported to the Montana Public Service Commission, which represented the company's property in Montana, by data from NorthWestern's FERC Form 1, which represented the company's total property. The DOR then averaged the resulting percentages, arriving at an allocation factor of 79.09 percent which was rounded to 79.1 percent. (Exh. 38, p. 16; Hofland, day 3, p. 12).

35. Internally, NorthWestern allocates costs among its various business segments. This allocation is based on the three factors of revenue, plant and operating labor. For the

past three or four years, Montana's share of these common costs, including the share attributed to the Colstrip property, has been about 74 percent. (Kasperick, day 1, pp. 69-70).

NorthWestern Appraisal

36. NorthWestern introduced a summary appraisal report by Michael E. Green, Accredited Senior Appraiser (ASA) and executive consultant with Stone and Webster Management Consultants. Mr. Green's appraisal assignment was to estimate the market value of the taxable tangible assets owned by NorthWestern in the State of Montana as of January 1, 2005. Mr. Green did not include in his appraisal any of NorthWestern's assets outside of Montana. (Exh. 5, cover page; Green, day 1, p. 93).

37. Mr. Green separately valued two electric utility transmission and distribution systems, a natural gas distribution system, a 30 percent interest in a coal-fired generating plant and other miscellaneous assets owned by NorthWestern and located in Montana. (Exh. 5, p. 6).

38. Mr. Green used the cost and income approaches in his appraisal. He did not use the sales comparison approach because there were not enough recent comparable sales. (Exh. 5, p. 21).

39. For NorthWestern's rate regulated utility operations in Montana, Mr. Green based his cost approach on OCLD or "net book value" as reported in the 2004 Annual Report of NorthWestern Energy to the Montana Public Service Commission. (Exh. 5, p. 16).

40. The Colstrip unit is not rate regulated. Consequently, Mr. Green based his cost approach for this facility on replacement cost new (RCN). He developed the RCN from a

proprietary database compiled and maintained by his company. For the Colstrip facility, total accrued depreciation was estimated at 47 percent, an amount then deducted from RCN. (Exh. 5, p. 16).

41. Mr. Green's total cost approach estimate of value for NorthWestern's property in Montana was $1,283,000,000, based on net book value for the regulated utilities and RCN less depreciation for the Colstrip facility. (Exh. 5, p. 16).

42. Mr. Green also considered the Montana rate base as another measure for the cost approach. To the rate base, he added the RCN less depreciation for the Colstrip facility for an estimate of value totaling $1,162,000,000. (Exh. 5, p. 21).

43. Mr. Green based his income approach on a discounted cash flow model due to the extensive use of this model by utility investors. (Exh. 5, p. 15). He projected revenues, expenses, and capital expenditures for a five year period based on information from NorthWestern and from public sources. (Exh. 5, p. 17). The discount rate used was a weighted average cost of capital, developed separately for the electric utility and for the gas utility using a capital structure derived from utilities reported in Value Line. (Exh. 5, pp. 18-19). The total calculated for all NorthWestern property in Montana based on the income approach was $1,178,000,000. (Exh. 5, p. 20).

44. In correlating the value estimates, Mr. Green gave primary weight to the income approach. His correlated system value totaled $1,185,000,000. From this amount, he deducted $55,329,410 for assets that are exempt or taxed separately, added $6,243,047 for the value of the company's interest in the BPA transmission lines, and subtracted $113,591,364 for the value of intangibles at the ten percent default minimum. (Exh. 5, pp. 21-22).

45. Mr. Green's original correlated estimate of value for NorthWestern's Montana property, after adjustments, was $1,022,000,000. (Exh. 5, p. 1).

46. On the final day of the hearing, Mr. Green adjusted his valuation to $1,045,000,000. During the hearing, he acquired an increased understanding of Montana's property tax class structure and rates. As a result, he reduced his estimate of NorthWestern's property tax expense which increased both his income and cost approach valuations. (Green, day 5, p. 36; Demonstrative Exh. 44).

CONCLUSIONS OF LAW

The Board has jurisdiction over this matter pursuant to § 15-2-301, MCA. As a general rule, the appraisal of the Department of Revenue is presumed to be correct and the Taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. *Farmers Union Cent. Exch. v. Department of Revenue*, 272 Mont. 471, 901 P.2d 561, 564 (Mont. 1995); *Western Airlines, Inc., v. Michunovich*, 149 Mont. 347, 353, 428, P. 2d, 3, 7, *cert. denied* 389 U.S. 952, 19 L. Ed. 2d 363, 88 S. Ct. 336 (1967).

The DOR is charged with assessing all property and equalizing values. Section 15-8-101, MCA. The Department centrally assesses NorthWestern's property each year pursuant to § 15-23-101, MCA. All property must be valued at 100 percent of its market value unless otherwise provided. Section 15-8-111 (1), MCA. The DOR may not adopt a lower standard of value than market value unless authorized by law. Section 15-8-111 (3), MCA.

Unit Valuation

The first question in this matter is did the Department of Revenue select the proper unit in valuing NorthWestern Corporation for purposes of property tax appraisal?

The unit method values an entire operating system as a going concern, an integrated, organized whole without functional or geographic division of the whole into its component parts. The unit approach relies on the proposition that each part of an organization is indispensable to the existence of the whole and contributes, proportionally, to its principal earnings. *See State Railroad Tax Cases,* 92 U.S. 575 (1875). The valuation pursuant to the unit method is meant to capture all of the operating assets, both tangible and intangible, as a going business concern.

The Department chose NorthWestern's entire corporate entity as the proper unit to value. NorthWestern contends this choice of unit was not appropriate and the unit should only be the Montana property. Traditionally, NorthWestern argues, the Montana segment of the company has been separate and can easily be valued separately. According to NorthWestern, the corporate unit used by the Department imports value from outside Montana and impermissibly taxes it.

The evidence demonstrates that NorthWestern is an integrated business. NorthWestern's management is centralized and its major debt obligations are secured by the entire corporate entity. The company's management and finances operate as an integrated system, as do its electric and natural gas transmission systems. *See* Findings 4-6, 9.

State law explicitly supports the concept of a unit reaching across state lines to encompass a full corporate entity. *See* §15-23-101, MCA. In addition, for over fifty years, the Montana Supreme Court has consistently approved the unitary assessment approach for appraisal of interstate utility properties. *See, e.g., Yellowstone Pipeline Co. v. State Board of Equalization*, 138 Mont. 603, 358 P.2d 55 (1960); *Western Airlines, Inc. v. Michunovich*, 149 Mont. 347, 428 P.2d 3 (1967); *DOR v. Pacific Power and Light*, 171 Mont. 334; 558 P.2d 454 (1977).

The concept of unitary assessment has also been firmly established in a series of historical decisions of the Supreme Court of the United States. *Pullman Co. v. Richardson*, 261 U.S. 330, 338, 43 S.Ct. 366, 368, 67 L.Ed. 682 (1923); *Fargo v. Hart*, 193 U.S. 490, 24 S.Ct. 498, 48 L.Ed. 761 (1904); *Galveston, Harrisburg & San Antonio Ry. Co. v. State of Texas*, 210 U.S. 217, 28 S.Ct. 638, 52 L.Ed. 1031 (1912); *United States Express Co. v. State of Minnesota*, 223 U.S. 335, 32 S.Ct. 211, 56 L.Ed. 459; *Union Tank Line Co. v. Wright*, 249 U.S. 275, 39 S.Ct. 276, 63 L.Ed. 602. (1919).

NorthWestern's argument for jurisdictionally based taxation was discounted by the Montana Supreme Court thirty years ago in *DOR v. Pacific Power and Light*, 171 Mont. 334; 558 P.2d 454, 458 (1976). The Court held that the actual cost of the physical plant within Montana alone does not equal the value of the allocated portion of a utility company. The unitary method determines not only the appropriate share of the entire enterprise which may be taxed by each state but also determines the "enhanced value" attributable to the equipment used by virtue of its being a component part of the system. The unitary method assumes the value of the entire system, as a going concern, is somewhat greater than the total fair market value of its equipment. *Id*, 340. Nothing in NorthWestern's argument or evidence presented to this Board distinguishes this matter from issues previously presented and overruled by case law.

The Department is granted some discretion in determining which approaches to value should be used "to secure a fair, just, and equitable valuation of all taxable property." *Montana National Bank of Roundup v. Department of Revenue*, 167 Mont. 429, 431, 539 P.2d 722, 734 (1975) *partially overruled on other grounds, Turner v. Mountain Engineering & Construction*, 915 P.2d 799, 803. In this matter, the Department determined that valuing the entire corporate unit and allocating value to the Montana portion would be appropriate. NorthWestern presented no persuasive evidence to the contrary.

Intangible Personal Property

The second question in this matter is did the Department properly remove intangible personal property from the assessment?

NorthWestern argues that the Department failed to remove an appropriate amount of intangible personal property (IPP) from its valuation of the company.

IPP is "personal property that is not tangible personal property and that: (a) has no intrinsic value but is the representative or evidence of value . . . or (b) lacks physical existence, including but not limited to goodwill." Section 15-6-218(2), MCA. Intangible personal property is exempt from taxation in Montana. Section 15-6-218, MCA.

Cost, income and market indicators can generally be expected to include the value of IPP. An indicator of value shall not be relied upon unless the value of IPP is removed or excluded. Rule 42.22.110, ARM.

By administrative rule, the Department makes a standard reduction in value to account for intangible personal property. Rule 42.22.110(1), ARM. For centrally assessed electric utility companies, the standard is a ten percent reduction for each indicator of value. A taxpayer may propose alternative methodology or information to argue that the amount of intangible personal property is greater than ten percent. *See* Rule 42.22.110(2), ARM.

If the DOR concludes, after fully considering the taxpayer's proposal or information, that the IPP value is greater than allowed by Rule 42.22.110(1), ARM, the unit value will be reduced accordingly. *See* Rule 42.22.110(2), ARM.

In this matter, the Department reduced its market and income approach indicators by the default ten percent value for IPP set forth for electric utilities in Rule 42.22.110(1), ARM.

The Department reduced its cost approach indicator by $378,735,895 for IPP, a 21 percent reduction. This amount is recorded in NorthWestern's FERC Form 1 as an acquisition adjustment and represents the goodwill that resulted from NorthWestern's 2002 acquisition of the Montana Power Company.

NorthWestern asserts that its intangible personal property totals $435.1 million, a difference of $59 million from the amount deducted by the DOR in its cost approach. NorthWestern reported this additional $59 million in their FERC Form 1 as a utility plant adjustment, which represents the amount that the company's value exceeded the total of its assets and liabilities under the fresh-start accounting principles used when NorthWestern emerged from bankruptcy in 2004. *See* Finding 32.

In challenging the Department's IPP deductions, NorthWestern first argues that the Department did not accept the total $435.1 million the company claimed for intangible personal property.

The Department is not required to accept the full amount of IPP as argued by NorthWestern. Rather, the Department is required to "give it full and fair consideration."

Rule 42.22.110(2), ARM. NorthWestern provided no evidence that the Department failed to give full and fair consideration to the amount of intangible personal property proposed by the company.

NorthWestern next argues that the amount of intangible personal property the Department deducted from the cost approach should be deducted instead from the correlated unit value. Rule 42.22.110(2), ARM, states in part, "If the Department concludes that the value of intangible personal property is greater than that allowed in [Subpart 1], the unit value will be decreased accordingly."

NorthWestern failed to provide any credible evidence that a deduction greater than the ten percent default minimum is appropriate for the market and income indicators of value. The value calculated through the cost approach relies on distinctly different methodology and financial information than the values calculated through the other approaches. Thus, use of a certain value for IPP, which may be appropriate in the cost approach, may not be relevant or accurate for use in the other approaches to value.

In addition, the Department's administrative rules specify a default percentage to be used to remove intangible personal property from each <u>indicator</u> of value (cost, income, and market). Rule 42.22.110, ARM. Thus, it is plausible for the Department to conclude that one <u>indicator</u> of value should be reduced by an IPP amount greater than the default percentage while the other indicators of value are only reduced by the default amount. When even one of the three indicators of value is reduced because a larger amount of IPP has been deducted from that value, the final overall <u>unit</u> value is inevitably decreased through including that lower indication of value in the correlation process. Thus, the requirement in Rule 42.22.110(2) that the <u>unit</u> value be decreased is satisfied.

Total Valuation of Property

The third question to be answered is did the Department properly calculate the indicators of value for purposes of assessment?

The Department's final revised appraisal utilized five different value indicators: original cost less depreciation, direct capitalization of net operating income, direct capitalization of gross cash flow, yield capitalization of free cash flow, and stock and debt.

After the deduction for intangible personal property, these value indicators ranged from $1.819 billion (stock and debt) to $1.274 billion (direct capitalization of gross cash flow). The correlated unit value determined by the Department's appraiser, Kory Hofland, was $1,507,614,000, about midway in the range of values.

Northwestern made a variety of arguments that certain indicators of value were improperly calculated. The appraisal presented by the taxpayer, however, does not value NorthWestern's entire corporate entity and fails to adequately address the legal structure and unit method valuation of Montana's property tax system. Consequently, the Board cannot apply the appraiser's data in any meaningful way to determine if modification of the Department's valuation is appropriate. In addition, the taxpayer failed to provide the Board with adequate, reliable data to calculate the effect of errors by the Department on the Department's total valuation.

For example, NorthWestern requested certain changes in depreciation and amortization for 2003 and in capital expenditures for 2003 and 2004. *See* Exh. 28; Hofland day 2, pp. 125, 128, 148. Although these changes and other material were submitted to the Department in July 2005, Mr. Hofland acknowledged the changes had not been made in the Department's final revised appraisal of September 20, 2005. *See* Finding 28.

NorthWestern, however, failed to have Mr. Hofland demonstrate to the Board the effect these changes, if made, would have had on the DOR's final appraised value. The taxpayer carries the burden of overcoming the presumption in favor of the Department's valuation. Simply identifying changes the Department failed to make is not enough. The taxpayer must also demonstrate the effect those changes would have on value. Because the taxpayer's appraisal data and analysis were inadequate to determine whether modification of the Department's appraisal was appropriate, we cannot rely on the taxpayer's appraiser or appraisal to demonstrate a change in valuation. In this instance, the appropriate way to make that demonstration is through the Department's appraiser, which provides assurance that the changes are made in a manner consistent with the Department's appraisal methodology and are adjusted in accordance with any and all errors acknowledged by the parties during the appeal process. *See* Findings 23, 28, and 29.

While we do not condone the Department's failure to make legitimate adjustments to indicators of value, we cannot perform those adjustments without recognizing all adjustments to value, such as the change in cost approach depreciation (Finding 23) and the change in the yield capitalization (Finding 29). Neither party introduced sufficient information to enable the Board to make an adjustment or to determine whether any adjustment made would be material to the Department's final appraised value of NorthWestern.

As a whole, the evidence indicated that the final appraised value of NorthWestern set a fair market value as required by law.

Allocation Factor

The fourth question to be addressed is did the Department allocate an appropriate amount of NorthWestern's total value to Montana?

NorthWestern challenges the allocation factor used by the Department to assign a portion of the total unit value to Montana. NorthWestern argues the allocation the company uses internally to assign shared costs among its operations is a more accurate allocation than the one used by the Department. However, simply specifying a preference for the company's allocation method and asserting that it is more accurate than the Department's is not enough to undermine the Department's approach. Evidence demonstrating how and why the alternative method more appropriately allocates value to Montana is also required. NorthWestern failed in its burden to show that the Department's method for determining the allocation factor and the allocation factor that results are incorrect. *See Moorman Mfg. Co. v. Bair*, 437 U.S. 267, 98 S. Ct 2340 (1978).

Attorney Fees and Costs

The final question presented in this matter is whether NorthWestern should be awarded attorney's fees and costs.

NorthWestern argues the DOR took a frivolous and bad faith position in this litigation and attorney's fees should be awarded to NorthWestern. The Board disagrees. Although there was disagreement between the parties in this matter, there is no evidence that the positions taken by the Department were frivolous or in bad faith. Attorney fees are denied.

CONCLUSION

The Department's 2005 valuation of NorthWestern, a centrally assessed property, was made in accordance with Montana law. The Department's decision is presumed correct and NorthWestern has not met its burden to overcome this presumption.

ORDER

IT IS THEREFORE ORDERED THAT the Department's 2005 appraisal of NorthWestern Corporation is upheld.

Dated this 13th day of September, 2007.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

Karen E. Powell
KAREN E. POWELL, Chairwoman

Sue Bartlett
SUE BARTLETT, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th day of September, 2007, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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