

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

Puget Sound Energy, Inc.,)	
)	Docket No. CT-2007-5
)	
Appellant,)	
)	Findings of Fact,
v.)	Conclusions of Law and
The Department of Revenue)	Order (on remand)
of the State of Montana,)	
)	
Respondent.)	

Case History

Puget Sound Energy, Inc., filed a challenge to its property valuation for tax years 2005, 2006 and 2007. In 2008, this Board held an eight-day hearing, the parties fully briefed the relevant issues, and the Board issued a 43-page opinion. *Puget Sound Energy v. DOR*, CT-2007-5, July 17, 2009. The Taxpayer appealed the decision to the District Court. The District Court reversed and remanded this Board's decision, and the Department of Revenue appealed on the limited issue of whether this Board had the authority to determine a market value higher than the Department determined in its assessment. The Supreme Court affirmed, concluding that the Board possesses authority to assess Taxpayer's market value at 100 percent of market value even if the

assessment exceeds the Department's original assessment, *Puget Sound Energy v. DOR*, 2011 MT 141, ¶ 37, and remanded the matter to the District Court. The District Court subsequently remanded certain other issues to us, specifically citing Section 2-4-704(2)(b), MCA. This section gives the District Court the authority to "reverse or modify the decision if substantial rights of the appellant have been prejudiced because: (b) findings of fact, upon issues essential to the decision, were not made although requested." The District Court lists a number of issues it found in the briefs of the Taxpayer on which the Court requested further examination and findings of fact by this Board.

Holding

We reaffirm the market values¹ of Puget, for tax purposes for the relevant years, are as follows: 2005: \$452,794,896. 2006: \$471,862,681. 2007: \$508,425,786.

Under the District Court's lengthy remand orders, we have reviewed the record and on remand we find and conclude the following:

Changes to the STAB decision of July 17, 2009

The Board's Order issued on July 17, 2009 is hereby incorporated into this Opinion, except for the following noted changes. This opinion incorporates the evidence presented, facts and arguments of the STAB opinion with the following

¹ With intangible value removed.

amendments: Page 1; "**Finding of Fact and Principles of Law**" is retitled to "**Evidence Presented.**" Additionally, "**Conclusions of Law and Board Discussion**" beginning on page 21 is hereby retitled "**Finding of Facts, Conclusion of Law and Board Discussion.**" *Puget Sound Energy v. DOR*, CT-2007-5, July 17, 2009. This Board notes that its labeling of the evidence presented was in error, and caused a mistaken impression that the recitation of evidence presented carried some weight as specific findings by this Board. This was not intended. The District Court found several of the "findings" conflicted and we believe that this resolves those questions. The weight the Board placed on particular evidence presented is addressed in the later section "Findings of Facts, Conclusions of Law and Board Discussion" in the decisions.

The original opinion is supplemented with the evidence noted here, to follow number 113 on page 22 of the Board's order.

Additional Evidence Presented:

114. The accompanying chart, which displays the values developed for PSE by the DOR, various witnesses for the DOR and PSE, and investment banking firms that PSE engaged, contains confidential financial material, generally absent from our decisions in order to protect the Taxpayer. These financial analyses formed the data background of the case and their inclusion here is intended to provide context that

helps explain our conclusions. The chart will be labeled “Attachment A: Confidential,” and will be sealed in the records of this case.

Findings of Fact, Conclusions of Law, and Board Discussion

As extensively discussed in our original decision, due to a myriad of errors, the evidence in this matter does not allow for acceptance of the valuation in the DOR appraisal.

As set out in our original decision, both Dr. Davis and Mr. Eyre were designated and are considered experts with extensive valuation experience and expertise. Both provided appraisals of value of the subject company that meet USPAP standards, and the parties provided additional evidence to support the values in those appraisals. We will therefore focus on the specifics of the controversy at issue and hereby incorporate all of the prior evidence.

We find the totality of the evidence supports Mr. Eyre’s final appraisal values of PSE as adjusted for the BPA lines. *Puget*, CT-2007-05. We based this decision primarily on the market data that supports Mr. Eyre’s valuations, and discredits Dr. Davis’ valuation.

On remand, we address and expand on our adoption of Brent Eyre's values, as adjusted, and our rejection of the Taxpayer’s arguments and evidence relating to economic obsolescence. Specifically we address below the District Court's remand of

sections III and V, A, B, D, and E and section II of the District Court's decision.

This discussion should be read in conjunction with the Board's original order.

Market Indicators of Value for PSE

Some of the strongest evidence supporting our choice of Mr. Eyre's values comes from the company's own strategic planning documents which they have labeled Confidential and which conclude a higher corporate value than the DOR, Mr. Eyre or PSE's own appraiser, Dr. Davis, calculated. Furthermore, the same income projections and methodologies developed by PSE, and the prominent Wall Street firms that studied PSE in those documents, are often the ones the company complains about when used by Mr. Eyre. We will endeavor to keep this confidential material separable from the remainder of our opinion, and thus this section of the opinion is Confidential and is attached as Attachment B. (Confidential)

Economic Obsolescence

The Taxpayer argued that PSE suffers from serious and detrimental economic obsolescence, and provided calculations of economic obsolescence in both the Cornia/Walters DEA report and Dr. Davis' appraisal. As previously held by this Board, "we find no economic obsolescence in the subject Company." *Puget*, p. 36. We reaffirm this finding.

The District Court remand orders us to explain why we rejected the economic obsolescence deduction requested by PSE and we start that explanation by pointing out that PSE did not present any actual evidence of economic obsolescence to this Board. Economic obsolescence is also called external obsolescence in the *Appraisal of Real Estate*.² It is defined as “a temporary or permanent impairment of the utility or salability of an improvement or property due to negative influences outside the property.” No evidence of impairments of the utility or salability was presented, and no explanation of any external negative influences was provided. In fact, PSE was an aggressively expanding corporation with a rate of return that the company itself considered acceptable and the company was preparing itself for a potential sale.³

Thus, at the most basic level, the Taxpayer did not meet its burden of proof. PSE presented calculations of an “income shortfall” without providing sufficient evidence to support the claim that it resulted from economic obsolescence. In addition, substantial market evidence demonstrated that PSE did not suffer from economic obsolescence that required any adjustment of its market value.

² The Appraisal Institute, 12th Edition, p.382.

³ PSE recognized that its earned equity return was below its nominally allowed ROE because of various regulatory disallowances, but, nevertheless, acknowledged that its actual equity return was a competitive financial objective. Exh. 56, PUG 18997 (confidential).

We acknowledge that economic obsolescence can certainly affect a utility company and its market value as the regulations and markets shift, but there is no persuasive evidence of that occurrence for PSE in the years at issue.

A. Regulatory Lag and Drag

PSE's management employees claim rate regulation negatively affected PSE's earnings due to regulatory lag, i.e., when there is a delay between the time an investment is made and the time when PSE is allowed to adjust its rates to earn a return on the new investment. DeBoer Testimony, Vol. I, pp. 452-460. They also claim rate regulation has negatively affected PSE's earnings in that some investments are not allowed to be included in the rate base (pool of assets) upon which PSE is allowed to apply its rates. DeBoer Testimony, Vol. I, pp. 452-460. For the five years immediately preceding the 2007 valuation date, PSE achieved an average return on equity in the 8 percent range. DeBoer Testimony, Vol. I, p. 451, ll. 11-14; Exh. 45, PUG-30611. This return is below the authorized rate of return on equity that is in excess of 10 percent. DeBoer Testimony, Vol. I, p. 451.

Evidence shows, however, that PSE's customer base expanded during the tax years at issue and is projected to continue to grow in the future. DeBoer Testimony, Vol. I, p. 443, ll. 17-20. This is not the sign of negative market influences as PSE implies. For some of the years at issue, PSE had to purchase power in addition to its

own generation because it did not have sufficient generating equipment to serve its growing retail demand. DeBoer Testimony, Vol. I, p. 444, ll. 3-7. PSE has been adding, and is expected to continue to add, generating facilities to service its new customers. DeBoer Testimony, Vol. I, p. 442, ll. 13-15. The regulatory lag and drag may affect the rate of return, but the market demonstrates that lag and drag does not detrimentally affect the market value of PSE for the years at issue, and was not considered by the Wall Street firms valuing the company⁴. Mere statements by PSE employees about regulatory lag and drag are insufficient evidence to demonstrate economic obsolescence without any actual documented evidence of impairment.

B. No Obsolescence Recorded by PSE in Regulatory Filings

The Washington Utilities and Transportation Commission (WUTC) regulates PSE's rate of return. The WUTC has adopted the Uniform System of Accounts, Title 18 CFR, as its basis for regulatory bookkeeping. DeBoer Testimony, Vol. I, P. 484, ll. 16-25; 18 CFR 101.12; 18 CFR 101, Instruction 22(b). Obsolescence is considered by utility regulators in establishing rates of depreciation. 18 CFR 101.12. This Uniform System of Accounts mandates consideration of "obsolescence" and "requirements of public authority" and permits "economic" studies. *Id.* Thus, the DOR argues that PSE could have presented an economic study showing obsolescence resulting from the requirements of a public authority, but has chosen not to do so.

⁴ See Confidential Attachment B.

For example, prior to this litigation, PSE sought regulatory approval from the WUTC for a shorter depreciable life for its Colstrip generating property due to claimed obsolescence associated with uncertain future coal supplies. DeBoer Testimony, Vol. I, pp. 463-65. The WUTC considered and rejected Puget's claim for shorter economic life for the Colstrip generation plant because of external limitations on coal supply. DeBoer Testimony, Vol. I, p. 465-66.

PSE also files significant disclosure data with the SEC, to provide required shareholder disclosure information, and there was no evidence of claimed economic obsolescence in its securities filings.

PSE failed to report any economic obsolescence in its state or federal regulatory filings, but argues that it need not do so for this Board to find economic obsolescence. In this instance, PSE made no claim of economic obsolescence to its shareholders or regulatory agencies for any of the years at issue. We find this evidence relevant to our determination that PSE suffered no economic obsolescence.

C. Income Shortfall Analysis

i. Dr. Davis' Value

We now address the specifics of the Davis appraisal. We first note that Dr. Davis, while labeling his proposed values as “unit” values, considers the “unit” to be only the physical plant and not the entire company, as required by Montana statute. Exh. 22, PUG-DOR 005110.

Dr. Wilson, a Department expert, provided comparable sales data for electric utility companies that emphasizes the difference between the value of the plant and the value of the entire company. Reviewing his sales data confirms that utility properties tend to have fair market value well in excess of net book value. Exh. 29, PUG-DOR-005429. His data, not challenged by PSE, showed that for all 24 sales of utilities between 2000 and 2006, the sale price greatly exceeded the cost or book value, in ratios that ranged from 1.37 to 2.79. Exh. 29, PUG-DOR-005431.

The sale prices of these companies indicate clearly that OCLD is not a valid starting point for valuing the company, as PSE’s appraiser Dr. Davis proposed. Exh. 29, PUG-DOR-005430, citing PSE internal documents. This market data, therefore, supports our finding that Mr. Eyre’s appraised value most closely reflects market value.

As noted in the original opinion, all experts agree that HCLD/OCLD is the basis for the cost approach for closely regulated utility companies such as PSE⁵. However, Dr. Davis then adjusted his cost approach to demonstrate additional economic obsolescence of PSE. We reject this approach and his appraised value.

Dr. Davis' approach contradicts the traditional method for calculating economic obsolescence, which typically would identify a negative influence, and select sales price or income data for the impaired property and compare this to a property that is not subject to the impairment. Eyre Testimony, Vol. III, p. 1519.

Dr. Davis instead calculated his obsolescence adjustment in the cost approach by an income impairment analysis. Through this analysis, Dr. Davis compared the level of income PSE actually earned from its operating property to the level of income it would have earned if it fully achieved the allowable rate of return. Davis Testimony, Vol. I, p. 673-678. In using this method, Dr. Davis determined that PSE was experiencing approximately 24.5 percent obsolescence in 2005, 31.6 percent in 2006, and 35.9 percent in 2007. Exhs. 17, 18 and 19; Davis Testimony, Vol. I, p. 671-677.

In rejecting PSE's obsolescence claim, this Board reaffirms its rejection of Dr. Davis' method of determining the presence of obsolescence, in particular his

⁵ We previously discussed Dr. Davis' income approach, and its deficiencies, in the prior opinion. We see no need to re-address those issues.

comparison of historic earnings versus the expected rate of return to determine a calculation of economic obsolescence. PSE's "income shortfall" approach has been repeatedly rejected by this Board and the Montana courts, including a previous case brought by the same Taxpayer, PSE, which was affirmed by the Montana Supreme Court. *Puget Sound Power & Light Co. v. Dep't of Revenue* (1988), 232 Mont. 314, 761 P.2d 336, *reh. den.* (1988). *See also United Telephone v. OTC*, 307 Or. 428, 770 P.2d 43 (1989); *Delta Airlines, Inc. v. Dep't of Revenue*, 328 Or. 546, 984 P.2d 836 (1999). We find no evidence in this matter that would make us reconsider prior rulings, nor do we find evidence that would indicate it is proper to use income shortfall calculations in this matter.

A significant problem with Dr. Davis' income shortfall methodology is that it converts what should be two separate, stand-alone indicators of value (cost approach and income approach), into one indicator of value by adjusting the cost approach with his income shortfall. In fact, as Mr. Eyre points out, the totals Dr. Davis concluded for the two approaches would have been identical but for an unexplained difference in the normalized NOI deductions he used in the two sets of calculations. Exh. 22, PUG-DOR 005125-005126; Exh. 23, PUG-DOR 005212; Exh. 24, PUG-DOR 005298; Eyre Testimony, Tr. Vol. II, p. 1146, ll. 14-18, p. 1150, ll. 9-16.

Further, this Board finds persuasive Mr. Eyre's testimony that Dr. Davis' income shortfall method creates a mismatch by taking an estimate of net operating

income that is based on a rate of return to the rate base and comparing it to an OCLD. The rate base, however, is not the same as the company's assets. Thus, the rate base is not a direct indicator of value and is not used as the basis for calculating value under any theory of valuation. And, the difference between rate base and OCLD is, at least in part, accumulated deferred income taxes (DITs) which are a zero-cost source of funds for Puget and therefore, excluded from the rate base by regulators. Plant that is funded by capital sources other than investor-supplied capital does not require the rate of return that PSE ascribes to it. Exh. 22, PUG-DOR 005123; Exh. 23, PUG-DOR 005209-005211; Exh. 24, PUG-DOR 005296-005297. Dr. Davis fails to consider any benefit that Puget received for collecting a tax that the company did not yet have to pay. *Id. See also*, Eyre Testimony, Tr. Vol. II, p. 1147, l. 16 through p. 1149, l. 15.

In his report, Dr. Wilson illustrates that zero-cost capital (in the form of deferred income taxes and customer advances for construction) is substantial in a growing company such as Puget. Exh. 29, PUG-DOR-005419. Further, Dr. Wilson criticizes Dr. Davis' claim that Puget's rate of return is determined in relation to the market value of its common stock. Dr. Wilson explains that regulators would not calculate rate of return in such a manner. We find his argument compelling.

Based on the evidence presented, the Board once again rejects the income shortfall methodology advanced by Puget. It is not an accurate or reliable method for

measuring or identifying economic obsolescence in this instance, because the evidence does not demonstrate any external/economic obsolescence.

ii. Cornia/Walters' Data

In our original opinion, we rejected Drs. Cornia and Walters' data envelope analysis (DEA) model supporting PSE's claim of economic obsolescence. Their presentation again failed to offer any evidence of economic obsolescence but focused instead on mathematical representations of various income patterns. The District Court directed us to further expand on our rejection of this methodology.

The DEA⁶ analysis purports to compare PSE to other utilities to determine whether PSE is suffering any obsolescence beyond that being experienced by the industry as a whole.

In this instance, we start with the fact that the DEA study itself shows no obsolescence for PSE in certain indicators. Indeed, the DEA report itself shows that PSE has less economic obsolescence than the industry average for all relevant years. Exh. 20, PUG-15618 & 15619; DEA, p. 30-31, chart. Further, the input data shows a growing company, with PSE performing above the average utility company, yet the DEA study, without explanation, also shows 32.6 percent economic obsolescence for PSE. In other words, PSE's own experts note that **PSE is above the industry**

⁶ Further explanation of the DEA can be found in the original decision.

average while also claiming that PSE suffers more than 32 percent impairment of market value, and thus has a **value well below the market**. Since market value for these comparable companies represents the average value of an electric utility company, we question how PSE can be both **above** and **below** the market average? This Board finds that conclusion not credible. In this study, we thus find the “frontier” or best practice envelope is too subjective, and easily manipulated, based on choices of input data. Exh. 20, PUG-15610, DEA, p. 22, figure 10.

Additionally, we find the evidence shows the Cornia/Walters analysis did not use sufficiently comparable companies when establishing the “frontier” to measure Puget’s purported obsolescence. Exh. 29, PUG-DOR 005441-005450; *see also* PUG-DOR 005450-005458. Drs. Cornia and Walters used seven different years of data from “comparable companies,” and each year different companies defined the “frontier” that they claim determines economic obsolescence. As a result of these fluctuating assumptions, every single company (including frontier companies) was determined to have substantial economic obsolescence during the multi-year time period. Exh. 29, PUG-DOR-005439. For example, in 2004, the “comparable” company that “contributed most heavily to Puget’s 42.3 percent combined obsolescence measure was Flowell Electric Association, a very small REA distributor in rural Utah that owns no generation, has 8 employees and serves only 400 customers in Millard County.” Exh. PUG-DOR 005449, citing Cornia/Walters report at p. 35.

In analyzing the modeling specifics of DEA, the DOR's expert Dr. McClave tested the sensitivity of the various Cornia/Walters models to the choices of companies to which PSE was being compared. By making minor changes in the inputs, the outcomes radically changed, demonstrating the extremely subjective nature of the program. These analyses resulted in either the elimination of all obsolescence or a significant reduction in the obsolescence that allegedly existed, simply by changing the comparable companies. Exh. 31, PUG-DOR 008522-008526; McClave Testimony, Tr. Vol. III, pp. 1301-1305. In fact, when Dr. McClave relied upon Mr. Eyre's comparable companies, no obsolescence existed. *Id.*; McClave Testimony, Tr. Vol. III, p. 1313, ll. 10-25; p. 1314, ll. 1-20; p. 1315, ll. 1-24. Even when including the additional companies that Drs. Cornia and Walters stated should have been included, the Board finds that no material change results. Exh. 53, PUG-DOR 009419. The Board finds the Cornia/Walters' model to be too volatile to be adequately determinative of economic obsolescence. Exh. 53, PUG-DOR 009421-009422.

Dr. Wilson also submitted a report which criticized the Cornia/Walters DEA methodology. Exh. 29. Dr. Wilson demonstrates several flaws with DEA modeling, noting that the Cornia/Walters study incorrectly assumes that "each firm has an incentive to maximize its total revenue." Exh. 29, PUG-DOR 005440; Exh. 20, PUG-15613. Dr. Wilson credibly pointed out that there are many utilities in the Cornia/Walters report whose goal is precisely opposite to this assumption. *Id.* Some

of the companies included were cooperative, or public municipal systems, such as the Flowell Electric Association, mentioned above. Further, several of the “frontier companies” have entirely different production capacities, types and sizes. And, as Dr. McClave’s work demonstrated, the outcomes are extremely sensitive to the subjective decisions made by the authors in selecting comparable companies and in structuring the comparisons. Ultimately, this Board finds that the Cornia/Walters report suffers from the same deficiency as the income shortfall calculations in that it does not offer any actual evidence of obsolescence. Drs. Cornia and Walters established no connection between the numerical estimates provided by DEA, however unreliable, and true obsolescence of Puget or any other public utility.

iii. Eyre’s Market-to-Book Ratio

The Court has also requested clarification of Mr. Eyre’s statement that the market-to-book ratio of PSE’s parent company was less than one, suggesting economic obsolescence. For several reasons, this Board did not find that justified the income shortfall deduction.

Mr. Eyre calculated a market-to-book ratio for Puget’s parent company for each of the years, and in 2006 that ratio was below 1. This Board finds, however, that mere fact does not alone prove that economic obsolescence is actually present, rather, it simply indicates that it might be present and further analysis is warranted. Mr. Eyre performed further analysis by calculating market-to-book ratios for

comparable electric utilities to determine “how the market perceives the value of these assets relative to their carrying values on the books.” The resultant market-to-book ratio for the comparable companies [for 2005] was 1.08. Exh. 22, PUG-DOR 005128; Exh. 7, PUG 005191. The 2006 market-to book ratio for the comparable companies was 1.10, Exh. 23, PUG-DOR 005214; Exh. 7, PUG 005277. For 2007 it was 1.18, Exh 24, PUG-DOR 005300; Exh. 7, PUG-DOR 005353. He thus found no indication of the externalities that result in economic obsolescence for the industry.

The Board further notes that other evidence presented in this case demonstrated that the market-to-book ratio for Puget’s parent company was actually above 1 for 2006. First, Puget’s own internally-prepared 10-year plan calculated a market-to-book ratio in excess of 1 for 2006. Exh. 40, PUG 30275. Second, three separate financial-analyst reports that were introduced at trial independently calculated a market-to-book ratio for Puget’s parent company to be in excess of 1 for 2006. This Board has no reason to discount the conclusions they reached. Exh. 43, PUG 30454-30456; Exh. 40, PUG 30275; Exh. 55, PUG 16112.

In summary, we find that Mr. Eyre’s one low market-to-book ratio for PSE’s parent company, even if correct, did not prove economic obsolescence.

Criticisms of Mr. Eyre's Analysis

A. Comparable companies

As directed by the District Court, this Board must establish through findings of fact whether the companies used by Mr. Eyre to calculate PSE's earnings-to-price ratios were sufficiently comparable to PSE.

Taxpayer contends that the companies used by Mr. Eyre in his appraisal were not sufficiently comparable to the subject company. Taxpayer further argues that significant adjustment must be made before using the data based on these companies primarily due to revenue streams that included income from non-regulated activities and non-utility operations. Walter Testimony, Vol. III, p. 1702. We note that PSE made no suggestions for a more comparable list, or an adjustment, and did not submit proposed calculations that addressed its concerns.

Mr. Eyre, in his testimony, outlined the criteria he used in selecting the companies. He looked for companies with comparable risk, growth, and profitability. Additionally, Mr. Eyre's companies were all located west of the Mississippi in the same market area, had significant coal-fired generation and little, if any, nuclear generation, similar to PSE. Ex. 22, PUG-DOR-005131; PUG-DOR-005178, Ex. 23, PUG-DOR-005218; PUG-DOR-005264; Ex. 24, PUG-DOR-005303, PUG-DOR-005348 (showing Beta, Growth and Dividend Yield for 2005, 2006 and 2007 respectively); Eyre Testimony, Vol. III, p. 1346, ll. 12-23.

We find PSE's argument unpersuasive, especially in light of the comparable companies used by PSE for valuation purposes. PSE's list included utility companies that had non-utility operations, foreign operations, unregulated entities as well as dissimilar customer bases that would have different income potential. Appendix to PSE's 2005 Strategic Plan, Exh. 40, PUG 30275; PUG 30277; Exh. 43, PUG 30454; PUG 30459. PSE's employee, Mr. Valdman, testified however, the companies in the list are comparable to PSE, with regard to their size and business mix. He did not mention any adjustments to make the list more comparable. PSE's expert witness, Dr. Heaton, confirmed Mr. Valdman's statement when he stated that he did not dispute the comparability of the list of companies used by PSE in its own internal analysis. Much of the information that Dr. Heaton used in his report resulted from many of the same companies that Mr. Eyre employed in his valuations. Valdman Testimony, Vol. III., p. 1528, ll. 20-24; Heaton Testimony, Vol. I, p. 328, ll. 15-18

In contrasting the companies used by PSE in its strategic planning and the companies used by Mr. Eyre, four out of nine companies in PSE's list are included in Mr. Eyre's list. Exh. 40, PUG 30275; Exh. 22, PUG 0005178-A; Exh. 23, PUG-DOR-005264; Exh. 24, PUG-DOR-005348.

In his valuation, PSE's appraiser, Dr. Davis, also used a list of comparable companies. Included were companies with significant nuclear generation, operations in foreign countries as well as companies located in the northeast and southeast in

different energy markets. Many of these companies offer little or no resemblance to PSE. Exh. 17, PUG-DOR 15342-15346 and PUG-DOR 15351-15372; Exh. 18, PUG-DOR 15416-15420 and PUG-DOR 15425-15446; Exh. 19, PUG 15490-15495 and PUG 15499-15529.

Throughout 2006, PSE engaged the expertise of Wall Street in determining its market value for potential sale. Each of three major financial companies “pitched” their presentations to PSE. In each of these presentations, the companies performed valuations which compared PSE to a variety of other utility companies. No adjustments to the companies on these lists were apparent in the evidence. Furthermore, in reviewing the twenty-one common companies, eleven appeared on Eyre’s list and seven turned up on PSE’s list. We consider that the use of these comparable companies to be evidence that the companies used by Mr. Eyre are comparable to the subject company. Exh. 43, PUG 30454-30546; Exh. 44, PUG-16850-16855; Exh. 52, PUG 17421-17424.

We would also note that while PSE disparages Mr. Eyre’s list, the plaintiff offered no actual evidence of a mismatch, no suggestion of a necessary income adjustment or even any quantification of the problem they claim resulted from the Eyre comparables. As he did not use companies with nuclear generation, foreign operations or extensive unregulated income streams, Mr. Eyre’s comparables did not need the adjustments that PSE’s comparables might have warranted, although PSE

made no adjustment in its calculations. The criteria used by Mr. Eyre, in the Board's view, are valid. We find Mr. Eyre satisfied the necessary level of comparability required for valuation purposes. Moreover, we find Mr. Eyre's selected guideline companies are more comparable for valuation purposes than those relied upon by Dr. Davis.

B. Mr. Eyre's Discounted Cash Flow Calculations

In its remand, the District Court, acting under the authority of Section 2-4-704(2)(b), requested that we respond to several issues raised by PSE in its pre- and post-hearing briefs.

Specifically, PSE challenges the income projections and other financial projections on which Mr. Eyre relied in his discounted cash flow model. While the Taxpayer acknowledges that the discounted cash flow method is acceptable, PSE urges caution be used because the accuracy of the assumptions and forecasts is important. PSE Post-Hearing Brief, p. 24. Mr. Eyre, however, used the numbers calculated and published by PSE itself in its September 2005 "10-Year Strategic Plan" (for 2005) and its October 2006 "10 Year Financial Forecast" (for 2006 and 2007) in creating his projections.

In relying on the PSE income data, PSE argues Mr. Eyre did not understand the reason the reports were created and the purposes and risks associated with them.

PSE argues these reports were generated to demonstrate hypothetical models created to compare what could happen if PSE acquired new generating assets. However, an examination of the documents indicates no language to the effect that these are merely hypotheticals for discussion, nor does the title of either document indicate it was a hypothetical exercise that did not contain reliable numbers. On the contrary, these reports were done to assist the corporate management in its strategic planning process, as well as evaluating potential sale possibilities.

PSE's criticism of Mr. Eyre states that PSE's own assumptions in these documents were too optimistic and Eyre should have questioned those assumptions. In essence, they are now saying that their own calculations and projections were false and unreliable and that Mr. Eyre's use of their own numbers makes his calculations incorrect as a result.

Since our task is to judge credibility when there is a disagreement between two sources of data, we choose to trust the numbers that were prepared for the internal use of the PSE Board rather than the version the Taxpayer presented when requesting a significantly reduced valuation. We find, therefore, that Mr. Eyre's reliance on the company's own income projections was reasonable.

C. Mr. Eyre's Yield Capitalization Analysis

The District Court's Order cites criticism of Mr. Eyre's yield capitalization at page 4-5 of PSE's post hearing reply brief. The brief states "However, it was widely agreed among witnesses for PSE and the DOR that the approach they used was not a valid income indicator for property tax purposes." This statement cites p. 248 of the Transcript and the accompanying slide presentation in Ex. 16 and is from Dr. Heaton, whose only criticism is that stock and debt data capture values beyond the value of the physical plant. This is simply a rephrasing of their oft-repeated argument that Montana should use the book value of their physical plant as the appraised value rather than the fair market value of the enterprise as the starting point for calculating a value. Montana law requires, however, that the DOR calculate a unit value for this company. Section 15-21-101(2)(a), MCA. Dr. Heaton's contention that property can be valued separate and apart from the corporate unit is contrary to long-standing Montana law. The unit value was most recently upheld by the Supreme Court in both *DOR v. PPL Montana*, 2007 MT 75, and *Pacificorp v. DOR*, 2011 MT 93. We decline to again address this argument.

Summary

Having examined the issues raised by the District Court, we hold that economic obsolescence did not exist for PSE for the years in question. The utter lack of evidence from PSE of economic obsolescence is particularly relevant, in part, because we were directed to provide findings as to why we concluded PSE does not suffer from economic obsolescence. Additionally, high internal market valuations clearly demonstrate that Mr. Eyre's appraisal sets a more accurate market value than Dr. Davis' appraisal. We find PSE is not credible in its arguments that it suffers from economic obsolescence, and that the lack of credibility stems from the evidence that the internal valuation by PSE is markedly higher than the value it claimed before the Board. We also find that there is no evidentiary justification for its claimed economic obsolescence impairment. Merely demonstrating complex mathematical schematic is insufficient to prove economic obsolescence.

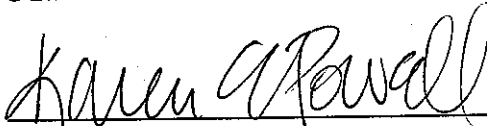
Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the total Montana value to be distributed to counties for Puget Sound Energy is determined to be: 2005: \$452,794,896. 2006: \$471,862,681. 2007: \$508,425,786.

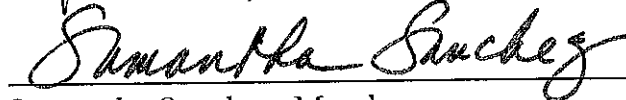
The Department of Revenue's market value determinations for Puget Sound Energy's property are therefore modified for tax years 2005, 2006, and 2007.

DATED this 23rd day of November, 2012.

BY ORDER OF THE
STATE TAX APPEAL BOARD



Karen E. Powell, Chairwoman



Samantha Sanchez, Member



Kelly Flaherty-Settle, 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 23rd day of November, 2012, a copy of the foregoing order was served on the parties hereto by the method indicated below and addressed as follows:

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