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TransCanada Hydro Northeast Inc. v. Town of Rockingham

Supreme Court of Vermont - September 9, 2016 - A.3d - 2016 WL 4718020 - 2016 VT 100

Taxpayer, which was an independent wholesale power producer, sought judicial review of town board of civil authority's valuation of hydroelectric facility for property taxation purposes.

State intervened on behalf of town. Following a bench trial, the Superior Court entered judgment setting value of facility at $130,000,000. Taxpayer appealed.

The Supreme Court of Vermont held that:

- Trial court did not err in relying on debt rate proffered by town's expert appraiser, as element of discounted cash flow (DCF) method for determining fair market value of facility;
- Trial court acted within its discretion in relying on calculation of capital expenses proffered by town's expert appraiser, as element of DCF method for determining fair market value of facility;
- Trial court acted within its discretion in relying on estimate of cost of federal relicensing for facility, as element of DCF method for determining fair market value of facility;
- Record supported trial court's finding that three upward adjustments from computed average values were warranted under comparable sale method for determining fair market value of facility; and
- Offer and sale announcement of other hydroelectric facilities were not reliable evidence of fair market value, and thus could not be used in comparable sale method for determining fair market value of facility.

Trial court did not err in relying on 6% debt rate proffered by town's expert appraiser as appropriate calculation of debt-rate element of discounted cash flow method for determining fair market value of taxpayer's hydroelectric facility for property tax purposes, though taxpayer asserted 6% rate was below-market debt rate. Expert calculated 6% debt rate based on taxpayer's own reported debt payments as well as those made by similar corporations, taxpayer did not demonstrate that expert's debt rate was invalid and failed to produce data to contradict calculation, and trial court found that expert was able to demonstrate market basis for his debt rate, which it found to represent sound estimates and valid inputs.

Trial court acted within its discretion in relying on calculation of capital expenses proffered by town's expert appraiser, as part of projected expenses for net revenue element of discounted cash flow method for determining fair market value of taxpayer's hydroelectric facility for property tax purposes, and rejecting approach by taxpayer's expert, though taxpayer asserted calculation by town's expert, including assignment of 1% of value of facility per year to long-term capital improvements, ignored future capital costs for necessary and planned capital improvements, including overhaul of turbines; town's expert explained his analysis and treatment of capital expenditures, and trial court carefully explained its decision process and how it was influenced by parties' expert testimony.

Trial court acted within its discretion in relying on estimate by town's expert appraiser of cost of

federal relicensing for taxpayer's hydroelectric facility, and rejecting approach by taxpayer's expert appraiser, as part of projected expenses for net revenue element of discounted cash flow method for determining fair market value of facility for property tax purposes. Trial court considered both parties' estimates for cost of relicensing, finding taxpayer's expert offered little support for its estimates and calculations and that town's expert offered more plausible estimate of likely costs and risks associated with relicensing, and trial court explained its decision-making process and how it was influenced by experts' testimony.

Record supported trial court's findings that three upward adjustments from computed average values for other hydroelectric facilities, based on-peak and off-peak power generation, ancillary revenue, and premium for taxpayer's facility, were warranted under comparable sale method for determining fair market value of taxpayer's facility for property tax purposes, where town's expert appraiser explained basis for his adjustments, including features of river and taxpayer's facility that elevated it above the average hydroelectric facility, such as amount of water on river, taxpayer's control over that water, ability of facility to use water, and river head and marketplace which taxpayer could sell into.

Sale announcement and offer for other hydroelectric facilities could not be relied upon in determining fair market value of taxpayer's hydroelectric facility for property tax purposes under comparable sales method of valuation, since announcement reflected mere hope rather than price which property would bring when offered for sale, and, though offer represented what property would bring in market if sale was completed, it did not rise to level of reliability demanded to estimate fair market value.

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