

BEFORE THE IDAHO STATE BOARD OF EQUALIZATION

IN THE MATTER OF THE 2024)	
OPERATING PROPERTY AD)	
VALOREM VALUATION OF:)	DOCKET NO. 0-650-175-488
)	
BIRCH POWER COMPANY (DBA-)	DECISION
BIRCH CREEK HYDRO) (13004021))	
)	
Petitioner.)	
_____)	

Birch Power Company DBA Birch Creek Hydro (Petitioner) filed a timely protest of the value of its operating property on the basis that the Property Tax Division of the Idaho State Tax Commission improperly and incorrectly appraised Petitioner’s property. Tom Arkoosh, Arkoosh Law Offices, represented Petitioner. Brett Jarvis, Deputy Attorney General, represented the Property Tax Division of the Idaho State Tax Commission (Staff).

DISCUSSION OF THE CASE AND FINDINGS

Petitioner’s property is operating property as defined in Idaho Code § 63-201(16). Operating property is assessed annually by the Idaho State Tax Commission acting as the Board of Equalization (Board) pursuant to Article 7, Section 12 of the Idaho Constitution. An owner of operating property may request a “hearing before the commission in relation to the assessment” of a property owner’s property. Idaho Code § 63-407. In these hearings, the property owner has an opportunity to contest the Staff’s recommended appraised values. See Property Tax Administrative Rule 407. The burden of proof is on the taxpayer challenging staff’s appraisal to show that they are entitled to the relief requested. *See* IDAPA 35.01.03.407.09.e; *PacifiCorp v. Idaho State Tax Comm’n*, 153 Idaho 759, 767, 291 P.3d 442, 450 (2012); Idaho Code § 63-409(2).

Valuation Issues

Petitioner presented eight general issues in their appeal including that Petitioner believed that the Staff understated the discount rate in using a modified build-up method and utilizing a modified mid-year convention and no company-specific risk, that the Staff grossly misstated project revenues and project revenue growth, that Staff understated operating expenses and expense growth rate, and that the State failed to normalize operating expenses to include property and water use costs. Further, Petitioner believed that the Staff overstated net operating income and failed to employ conservative assumptions as required by the Findings of Fact and Conclusions of Law by Judge Medema in the Fourth District Court for cases CV01-19-16618, CV01-20-14769, and CV01-21-14372 relating to litigation for prior tax years (District Court Findings). Petitioner also submitted a proposed value based on their assessment of valuation of the property, which was significantly lower compared to the Staff's recommendation, in the amount of \$2,003,000.

Staff defended their appraisal with explanation that their recommendations were made following the District Court Findings. Specifically, the Court instructed the Staff to use company specific data rather than industry averages when valuating these companies, to use the build-up model, that a five-year forecast period should be used instead of the duration of the power purchase agreement, and that the Staff should make assumptions conservatively and in the taxpayer's favor. Also, the Staff explained that the income data for Petitioner's company accurately reflects the company specific risk and that the Staff did not put any weight on publicly traded guideline companies when appraising the operating property of these small, privately owned non-utility generators. Overall, Staff justified that the methods they used in their appraisal are standard

practice in the appraisal industry and that the appraisal was made in accordance with the District Court Findings.

This Board finds that the value set forth in Staff's appraisal should be upheld. The Staff's recommendations were made following the District Court Findings and using standard and appropriate methodology in the appraisal industry. Further, Petitioner's argument for a significantly lower value was not justified and, overall, nothing further was presented to show Staff's values were incorrect or should be lowered.

4-R Act Issue

Petitioner also asked for their assessed value to be reduced by the same amount that it would be reduced under the federal Railroad Revitalization and Reform Act of 1976 (also known as the "4-R Act") if Petitioner were a railroad. The 4-R Act requires states to use ratio studies to test whether commercial and industrial property has been assessed at a level that is more than five percent below the ratio of market value at which the railroads were assessed and to grant railroads relief if commercial and industrial property is found to be below 95%. In May 2023, the Idaho Supreme Court held that Idaho's constitutional uniformity requirement entitles owners of operating property that qualify the same relief that railroads receive under the 4-R Act. *Idaho Power Company v. Idaho State Tax Commission*, 530 P.3d 672 (2023).

Staff prepared a report applying the same methodology to all operating property in Idaho as is applied to the railroads. This report uses ratio studies based on the commercial and industrial property values in the counties where the railroad (or in this case, Petitioner's property) is present to determine whether a reduction should be granted under the 4-R Act. The Board took up this issue generally on August 14, 2024, and decided to grant the reductions shown in Staff's report for all operating properties in Idaho. However, Staff's analysis shows that some operating properties receive no reduction under the 4-R analysis because, in the case of those properties, no ratio studies

showed that the level of assessment for commercial and industrial property was less than 95% of market value in the counties where those properties are present. Such is the case for Petitioner, no reduction to the assessed value is merited under the 4-R Analysis.

CONCLUSION AND DECISION

After reviewing the record and materials submitted by the parties, we, the Idaho State Tax Commission, sitting as the State Board of Equalization, hereby uphold Staff's 2024 recommended value, as contained in the appraisal report. The board hereby assesses \$2,750,000 to be the taxable value of Petitioner's operating property.

DATED this 26th day of August 2024.

IDAHO STATE TAX COMMISSION



Jeff McCray
Commissioner



Jared Zwiygart
Commissioner



Janet Moyle
Commissioner

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August 2024, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

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