

BEFORE THE IDAHO STATE BOARD OF EQUALIZATION

In the Matter of the 2023)	
Operating Property Ad Valorem)	
Valuation of)	DOCKET NO. 1-929-585-664
)	
BIRCH POWER COMPANY DBA)	DECISION
BIRCH CREEK HYDRO)	
Petitioner.)	
)	
)	
)	

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 (Staff) 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). Pursuant to Property Tax Administrative Rule 407.02, Petitioner requested an appealable decision in lieu of a hearing before the Idaho State Board of Equalization (the Board). To that end, Petitioner and Staff jointly entered a stipulation requesting that the Board decide the matter on the record without a hearing.

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 Tax Commission pursuant to Chapter 4, Title 63, Idaho Code. The burden of proof is on the taxpayer challenging Staff’s appraisal to show that they are entitled to relief. *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).

Staff initially appraised Petitioner’s property earlier this year. However, Staff recently amended those appraisals, modifying the valuation based on direction provided by the district court

in its decision regarding Petitioner's property value appeals for 2019, 2020, and 2021 (Ada County District Court case number CV01-19-16618). Staff, in their amended appraisal, appraised Petitioner's property at \$3,187,000.

Valuation issues

The record presented mostly the same valuation arguments that were presented to the SBOE in Petitioners' 2018 through 2022 SBOE appeals, primarily that Staff's yield rate study results in an unrealistically low weighted average cost of capital and that Staff's allegedly inflated assessments also result from misunderstanding or misuse of empirical data. The record also contained written criticisms about Staff's updated methods used for the amended appraisals, but no alternative values were proposed along with these criticisms. Nothing else was presented to show that Staff's values were incorrect, therefore we find that the value set forth in Staff's appraisal should be upheld.

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 allows owners of all operating property to ask for 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, 2023, 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 2023 recommended value, as contained in the amended appraisal report. The board hereby assesses \$3,187,000 to be the taxable value of Petitioner's operating property.

DATED this 25th day of August 2023.

IDAHO STATE TAX COMMISSION



Jeff McCray
Commissioner



Jared Zwygart
Commissioner



Janet Moyle
Commissioner


CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of August 2023, 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:

C. TOM ARKOOSH
ARKOOSH LAW OFFICES
913 WEST RIVER STREET, SUITE 450
P.O. BOX 2900
BOISE, ID 83701

Receipt No.

7019 2970 0000 3044 0457

A handwritten signature in blue ink, appearing to read "Anna Go", is written over a horizontal line.