To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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In the Matter of the Application of
CENTRAL HUDSON GAS & ELECTRIC CORPORATION,

Petitioner(s),

-against -

THE ASSESSOR OF THE TOWN OF NEWBURGH, THE BOARD OF REVIEW OF THE TOWN OF NEWBURGH and THE TOWN OF NEWBURGH,

Respondent(s).

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DECISION/ORDER

Index Nos:
4903/01
4521/02
4800/03
4530/04

Motion Date:
1/16/07

LaCAVA, J.

The following papers were considered in connection with this application by petitioner for an Order partially striking respondent's appraisal report:

PAPERS	NUMBERED
NOTICE OF MOTION/MEMORANDUM/AFFIRMATION/EXHIBITS	1
AFFIRMATION IN OPPOSITION/EXHIBIT	2
MEMORANDUM OF LAW	3

In this tax certiorari matter, petitioner Central Hudson Gas & Electric (CHGE) challenges tax assessments by taxing authority Town of Newburgh (Newburgh) and its tax assessor upon certain parcels of CHGE's real property, and improvements thereon, for the tax years 2001 through and including 2004. Among the assessments being challenged are the following properties:

Parcel, Tax ID # ending	Description
...1002	Roseton to Rock Tavern Trans. Line

...1012	Marlboro to Chadwick Trans. Line
...1032	Chadwick to East Walden Trans. Line
...1051	Danskammer to North Chelsea Trans. Line
...1061	Danskammer to North Chelsea Trans. Line
...1071	Danskammer to Marlboro Trans. Line
...1081	Roseton to Hurley Trans. Line
...1103	Marlboro to Balmville Road Trans. Line
...1101	Marlboro to Balmville Road Trans. Line
...1023	West Balmville to Chadwick Lake Trans. Line
...1022	West Balmville to Chadwick Lake Trans. Line
...2013	Cochecton to Highland Natural Gas Line

It is undisputed that these electric and (in the later case) gas transmission lines are installed either over or under land which is either owned in fee by CHGE or for which CHGE has utility easements. It is also undisputed that, relating to these parcels, the final assessment rolls for the tax years in dispute contain no assessed value for the land, the land value being indicated as $-0- in the case of each listed parcel. However, the final assessment rolls for those tax years do contain, in the case of each parcel set forth above, a total assessed value for each parcel, and thus, absent any assessed land value thereon, the values listed therein relate to the improvements on each parcel. The specific values appear as follows:

Parcel, Tax ID ending	$ Land	$ Total,
...1002	-0-	1,152,100
...1012	-0-	266,900

...1032	-0-	181,200
...1051	-0-	366,000
...1061	-0-	161,300
...1071	-0-	327,200
...1081	-0-	421,000
...1103	-0-	111,420
...1101	-0-	259,980
...1023	-0-	226,875
...1022	-0-	378,125
...2013	-0-	991,300

On January 5, 2007, the parties exchanged trial appraisal reports. There, for the first time, Newburgh asserted that each of the above parcels, contrary to the final assessment rolls, was indeed valued at a set amount for its land component. CHGE now moves to strike Newburgh's appraisal, to the extent it sets forth land values for the instant parcels.

As set forth above, respondent's assessor chose to designate the land values of the instant parcels as $ -0- for the tax years in question. Section 502 of the Real Property Tax Law provides as follows:

> § 502. Form of assessment roll
>
> 1. The form of the assessment roll shall be prescribed or approved by the state board, in accordance with the requirements contained in this section.
>
> 2. Provisions shall be made with respect to each separately assessed parcel of real property for the entry, in appropriate columns, of the name of the owner, last known owner or reputed owner and a description sufficient to identify the same, including the surnames of the abutting property owners and the names of the abutting streets or highways, the approximate number of square feet, square rods or acres contained therein or a statement of the linear dimensions thereof. Separately assessed privately owned streets or roads, such as those

> situated within a subdivision, may be described in a single account in the name of the owner, last known owner or reputed owner thereof. When a tax map has been approved by the state board, reference to the lot, block and section number or other identification numbers of any parcel on such map shall be deemed a sufficient description of such parcel.
>
> 3. The assessment roll shall set forth the uniform percentage of value applicable to the assessing unit (or in a special assessing unit, the uniform percentage of value applicable to the class) pursuant to section three hundred five of this chapter, and shall provide for the entry with respect to each separately assessed parcel of the assessed valuation of the land exclusive of any improvements, the total assessed valuation, and the full value of the parcel. Nothing herein shall be deemed to require entry of a land value for real property subject to the provisions of article nine-B of the real property law. Only the total assessment, however, shall be subject to judicial review provided by article seven of this chapter.

Petitioner asserts that respondent seeks, in effect, to amend its final assessment roll with respect to the instant properties, by now, for the first time, and on the eve of trial, asserting a set value other than $ -0- for these parcels.

The Court has previously employed the setting of a valuation ceiling and floor as an aid in the resolution of tax certiorari matters (*See Orange and Rockland Utilities v. Town of Haverstraw*, 12 Misc3d 51564U, 2006 N.Y. Misc. LEXIS 2164 [Supreme Court, Rockland Co., 2006]). Petitioners will be held to the greater of their appraisal or petition values, and respondents to the lesser of their appraisal or assessment values, as said values constitute admissions against their respective interests (*see Orange & Rockland Utils., Inc. v. Assessor of Haverstraw*, 7 Misc. 3d 1017A; 801 N.Y.S.2d 238; 2005 N.Y. Misc. LEXIS 865 [Supreme Court, Rockland Co., 2005, Respondents' appraiser concluded a fair market value for the Bowline Station for the year 2000 of $ 341,000,000. The Respondents are bound by their admission against interest and the 2000 Petition is reduced from $771,026,464 to $341,000,000"], citing, *inter alia*, *Norton Co. v. Assessor of Watervliet*, 3 A.D.3d 760 [3rd Dept. 2004] and *Ulster Bus. Complex LLC v. Town of Ulster,* 293 A.D.2d 936 [3rd Dept. 2002].

Here, the floor below which the Court may not value the instant parcels is, as set forth previously, the greater of the

amounts alleged in CHGE's Petitions for each tax year, or the amounts set forth for each parcel in the petitioner's appraisal. (In all cases here, the petitioner's appraisal values exceeded those asserted in the individual petitions). Likewise, the ceiling above which the Court may not value the property is the lesser of the amounts assessed upon each parcel and placed by respondent's assessor on the final assessment rolls for each tax year, or the amounts set forth for each parcel in the respondent's appraisal.

There is no evidence that Respondent has followed the procedures set forth in Title 3 of the Real Property Tax Law regarding the amendment of final assessment rolls. To the extent that respondent's current assertion of set values in its appraisal of land values for the parcels at issue, constitutes an effort to amend such assessment, such amendment is denied. Further, having set forth in the final assessment rolls that the land values of the instant parcels in the tax years involved were $ -0-, this Court holds that declaration to have been against respondent's interest, which prevents them from asserting now any value other than $ -0- for the land portion of those parcels.

Further, the Court notes that respondent would also be barred by the doctrine of equitable estoppel from now asserting land values for the affected parcels. As the Court of Appeals said in *Nassau Trust Co. v. Montrose Concrete Products Corp*., 56 N.Y.2d 175 (1982), [a]n estoppel "'rests upon the word or deed of one party upon which another rightfully relies and so relying changes his position to his injury'"

As petitioner properly points out, in its petitions, and prior to the exchange of the trial appraisals, petitioner did not challenge the land portion of the assessment, since, prior to the exchange, that portion of the total assessment was not in issue as respondent had deemed that value to be $ -0-. Now, petitioner has effectively been rendered unable to contest that issue before the Court, for failure to raise it previously. Notably, petitioner's appraisal fails to even address the issue of land value–-if any–-for the instant parcels, precisely because respondent failed to put the land value in issue before the exchange of appraisals less than one week prior to trial. Having taken a position–-that it did not have to contest a $ -0- assessed land values at trial, due to respondent's assertion in its assessment that that was the land value of the parcel--petitioner should not be penalized by now, at trial, having to contest the issue.

Finally, petitioner properly argues that in any event easements in gross, such as those present here (*see Antonopulos v. Postal Telegraph Cable Company, Inc*., 262 A.D. 564 [2nd Dept. 1941],

aff'd 287 N.Y. 712 [1942]), are simply not defined as property subject to taxation pursuant to RPTL 102 (12). As 10 Op. Counsel SBRPS No 103 notes:

> An "easement in gross is not a separately assessable interest in real property, although mains and pipelines installed pursuant to such easement may be taxable (5 Op. Counsel SBEA No. 62, modified).

Thus, to the extent these parcels represent easements in gross held by CHGE and not fee interests, they are simply not taxable as interests in land.

Upon the foregoing papers, it is hereby

ORDERED, that the application is granted, to the extent that the ceiling for valuation of the aforementioned parcels is presently[1] determined to be the lesser of the values asserted by respondent in its trial appraisal for improvements alone on the above-described parcels, and the amount appearing on the final assessment role for said parcels, and is in all other respects denied.

The foregoing constitutes the Opinion, Decision, and Order of the Court.

Dated: White Plains, New York
March , 2007

[1]The Court notes that testimony in the instant trial has not yet concluded, and that either or both appraisers may concede values in the affected parcels which (in the case of the petitioner's appraiser) exceed or (in the case of the respondent's appraiser) fall below those values currently designated in this decision as the floor and ceiling respectively for the parcels' valuation. To the extent that the parties or their appraisers so concede, the issue of the valuation floor and ceiling may be reopened by the opposing party or parties to that limited extent.

HON. JOHN R. LA CAVA, J.S.C.

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