

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

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

**DECISION/ORDER/
JUDGMENT**

Petitioner(s),

-against -

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

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

Motion Date:
1/16/07

Respondent(s).

-----X
LaCAVA, J.

The trial of this Tax Certiorari Real Property Tax Law (RPTL) Article 7 proceeding, challenging the valuation by the Town of Newburgh (hereinafter "Town") of the real property owned by Central Hudson Gas and Electric Corporation (hereinafter "CHGE"), took place before the Court on twelve dates¹ in 2007, and in addition the following post-trial papers numbered 1 to 25 were considered in connection with the trial of this matter:

<u>PAPERS</u>	<u>NUMBERED</u>
PRE-TRIAL STIPULATION AND CONSENT ORDER	1
PETITIONER'S PRE-TRIAL MEMORANDUM OF LAW	2
RESPONDENT'S PRE-TRIAL BRIEF	3
PETITIONER'S POST-TRIAL MEMORANDUM OF LAW	4

¹The matter was tried before the Court on the following dates: January 22, 23, 24, 25, and 26; March 6, 7, 8, 9, 21, and 23; and April 27, 2007.

PETITIONER'S RELEVANT CASES		4A
PETITIONER'S PROPOSED FINDINGS OF ACT AND CONCLUSIONS		5
RESPONDENT'S POST-TRIAL MEMORANDUM OF LAW		6
PETITIONER'S POST-TRIAL MEMORANDUM OF LAW		7
RESPONDENT'S POST TRIAL MEMORANDUM OF LAW		8
PETITIONER'S DECEMBER 28, 2007 LETTER		9
PETITIONER'S APPRAISAL (KLEINSCHMIDT)	VOL 1	10
"	"	
	VOL II	11
"	"	
	VOL III	12
"	"	
	VOL IV	13
"	"	
	VOL V(A)	14
"	"	
	VOL V(B)	15
"	"	
	VOL VI	16
"	"	
	VOL VII	17
PETITIONER'S APPRAISAL (AUS)	VOL A	18
"	"	
	VOL B	19
"	"	
	AMENDED APPENDIX 9	20
PETITIONER'S APPRAISAL (CAPSTONE)		21
RESPONDENT'S APPRISAL	VOL I	22
"	"	
	VOL II	23
"	"	
	VOL III	24
"	"	
	VOL IV	25

Based upon the credible evidence and testimony adduced at the trial, and upon consideration of the arguments of respective counsel and the post trial submissions, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Tax Parcels

Petitioner CHGE challenges tax assessments by taxing authority Town and its tax assessor upon certain parcels of CHGE's real property, and improvements thereon, for the tax years 2001 through and including 2004. 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	Cocheton to Highland Natural Gas Line
43-3-1	West Balmville Substation
43-5-33	Old Balmville Substation
99-5-600	Chadwick Lake Switching Station
72-8-2	West Newburgh Substation

Originally, Petitioner had also challenged the assessments on the following parcels for each said tax year, but those challenges were withdrawn:

....490	Fleetwood Drive Regulator Station
....491	Algonquin Regulator Station
....492	Steward Ave Regulator Station
....493	Meadow Hill School Regulator Station

97-1-21.1	Cochecton Regulator Station
75-1-7	Cronomer Hill Gas Reg. Station
97-3-22.2	New Windsor Customer Headquarters

Equalization Rates

Prior to trial, the parties stipulated to the following Equalization Rates:

2001	2002	2003	2004
47.42%	49.65%	45.24%	40.20%

Assessed and Equalized Full Market Values

The parties also stipulated to the following assessed values for the tax years at issue, and the corresponding Equalized Full Market Values:

Tax Id#	Town AV	2001	2002	2003	2004
1002	1,152,100	2,429,566	2,320,443	2,546,640	2,865,920
1012	266,900	562,843	537,563	589,965	663,930
1032	181,200	382,117	364,955	400,531	450,746
1051	366,000	771,826	737,160	809,019	910,448
1061	161,300	340,152	324,874	356,543	401,244
1071	327,200	690,004	659,013	723,254	813,930
1081	421,000	887,811	847,936	930,592	1,047,264
1103	111,420	234,964	224,411	246,286	277,164
1101	259,980	548,250	523,625	574,668	646,716
1023	226,875	478,437	456,949	501,492	564,366
1022	378,125	797,396	761,581	835,820	940,609
2013	991,300	2,090,468	1,996,576	2,191,202	2,465,920

43-3-1	1,390,500	2,932,307	2,800,604	3,073,607	3,458,955
43-5-33	189,100	398,777	380,866	417,993	470,398
99-5-600	94,300	198,861	189,930	208,444	234,577
72-8-2	150,000	316,322	302,115	331,565	373,134

In a decision dated March 7, 2007, this Court denied the motion by petitioner to strike respondent's appraisal, except to the extent it sought to allege, for the first time, separate values for the land portions of the aforementioned parcels; the Court held that respondent's proof of value would be limited to the lesser of the values asserted by respondent in its trial appraisal for improvements alone on the said parcels, and the amount appearing on the final assessment role for said parcels

THE TESTIMONY

Petitioner's Appraisal Values and Arguments

Mr. Paul Williams of Kleinschmidt Associates, a licensed professional engineer in the states of Maine and Vermont with over twenty-seven years of experience in electric generation and transmission construction and engineering consultation, testified for CHGE on his estimate of costs for the electric transmission lines and substations. He computed the reproduction cost new (RCN--the first step in computing value by reproduction cost new less depreciation or RCNLD) for the electric transmission lines and substations by applying the Quantity Survey Method (QSM); he also quantified functional obsolescence at the West Newburgh Station, and provided his expert opinion of the useful lives of the major components being valued.

In order to determine the RCN by the QSM, Mr. Williams calculated the total material, installation (labor) and all other direct costs for each component, and then added these direct costs for each component together to compute the total direct costs involved. To the total direct costs he then added such items of the general contractor's general requirements as: costs incurred for mobilization and demobilization; temporary facilities; the general contractor's overhead and profit; and finally, contingencies. The calculation of direct costs included total direct cost assuming that the work was done by an outside general contractor, and, he alternately calculated direct costs, assuming that the work was done in-house by CHGE employees. The latter, of course, do not include contractor's overhead and profit, is done at

in-house labor rates, and utilizes quantity discounts from CHGE's ability to purchase from its own preferred suppliers. Mr. Williams testified that, in his experience, all of the subject improvements, except the two underwater river lines (parcels 1051 and 1061), would normally be constructed by CHGE employees. While most parcels thus had cost calculations both as contracted-out and in-house, for the two crossing lines, his estimate was computed only as if done by an outside contractor.

In valuing the labor and material costs (including taxes, where applicable), Mr. Williams made use of a commonly used cost manual in the industry, the *R.S. Means Manual*. *R.S. Means* details work categories, including cross references and explanations of its unit cost derivations and the manual's application, from data collected throughout the United States and Canada. The data collected is updated annually and includes actual current construction costs for different building types and for other construction improvements, as well as for different skilled and unskilled trades.

In the exercise of his engineering expertise, however, Mr. Williams also evaluated the accuracy and/or applicability of *R.S. Means* by reviewing actual competitive construction bids in upstate New York in comparison with KA's cost estimates. These comparisons showed that his cost estimates, using *R.S. Means*, were within 1.5% and 4% of the actual final construction costs of contractors.

Once total direct costs were computed, Mr. Williams added the required indirect cost items necessary to construct the subject improvements. These indirect costs included: engineering cost (calculated as a percent of the total direct costs); owner's administration costs (e.g., accounting oversight and payment of contractor vouchers, both of which usually account for five to fifteen percent of the direct costs, although Mr. Williams determined that ten percent of direct costs was appropriate); permitting costs; insurance costs; sales tax; an allowance for use of funds during construction (AFUDC), based on CHGE's published rates; and a retainage percent. The sum of total direct costs and total indirect costs yielded total RCN.

For the benefit of the Court, Mr. Williams costed out both electric transmission lines and conductors. He also estimated the weighted average date of installation for each major component, in order to assist Mr. Jerominski in determining depreciation. And, finally, he rendered his engineering opinion on the useful life of the major components in question, namely the length of time that an asset continues to function for its intended use. He based his opinion on his twenty-seven years of experience as a practicing

engineer; on the over forty years of engineering experience of KA, and on his review of industry literature relating to each of the major components involved. Such literature included *Engineering Valuation and Depreciation*, by Marston, Winfrey and Hempstead, a well-known and recognized treatise utilized by practicing engineers involved in valuating utility property. Notably, Mr. Williams' opinion of useful lives for, inter alia, steel towers and wood poles, 40 years in the case of each component, exceeded the estimated lives of those components determined in that specific treatise.

Mr. Williams also testified regarding the presence of functional obsolescence in the improvements, finding none for the transmission lines or for two of the three substations. He did, however, determine its existence at the West Newburgh Station. The station was functionally obsolescent due to the fact that it no longer served any electrical purpose (including for the transmission of electricity); and the fact that it was presently a one-story, non-functioning building, with no lights, power or heat. As such, and treating it as if put to the only use to which it was readily adaptable, specifically as unheated storage space, the methods and materials used to construct the building, as it existed on each valuation date, were deemed superfluous. To determine functional obsolescence for the building, he compared the RCN of the substation as it existed on each of the valuation dates to the cost of constructing a replacement storage structure. He noted that the replacement would incorporate the same design and size, but utilize a different building material (i.e. insulated metal). The resulting difference between the RCN and the replacement cost quantified the functional obsolescence of the current structure.

However, regarding the underwater natural gas transmission line, Mr. Williams determined that, since the existing data and drawings contained insufficient detail, he could not properly rely on the Quantity Survey Method to compute an RCN. In fact, the drawings were, in actuality, merely a schematic design which was overlaid on an aerial photograph, not an as built drawing. In addition, Williams could not use *R.S. Means* for costing the components, since *Means* contained prices only for distribution lines, and did not include the transmission lines which constituted the subject asset. He clarified the difference by testifying that transmission lines, being subject to greater pressures, are thicker and built to more exacting standards than distribution lines.

Since the original cost data was accurate, however, Mr. Williams elected to employ the Trended Original Cost Method (TOC). Notably, respondents' expert's testimony was compatible with Mr. Williams' conclusions of value in utilizing this method.

Mr. Charles Jerominski, a principal at AUS Consultants, Inc. ("AUS"), testified as petitioner's appraiser of the electric transmission and substation improvements, and the gas transmission line. Mr. Jerominski has thirty-eight years of experience in the appraisal of utility property, and is a senior member of the American Society of Appraisers, as well as being a licensed professional engineer in the State of Wisconsin. He stated that he has conducted between fifteen and twenty appraisals involving utility properties located in New York, and that he has testified as an expert on numerous occasions in the State of New York.

As part of his practice, Mr. Jerominski testified that he has also conducted between fifty and one hundred depreciation studies, either independent of, or in addition to his appraisal work. He described depreciation studies as statistical analyses of retirement patterns of the many components of utility property, in order to determine the service lives of those components. Depreciation studies review the amount of investment by vintage within components, and statistically analyze the amount of retirement by vintage for that same component. The data provides a surviving profile and survivor curve, and, under the survivor curve, the average service life ("ASL") of the component.

Mr. Jerominski testified that he was tasked with conducting an RCNLD analysis to value the subject electric transmission lines, substations, and the natural gas transmission line. Notably, as petitioner has pointed out, Mr. Jerominski was the appraiser in *Niagara Mohawk Power Corporation v City of Cohoes Board of Assessors*, 280 A.D.2d 724, 727-278 (3rd Dep't 2000), lv denied, 96 N.Y. 2d 719 (2001), and petitioner asserts that the valuation methodology used in the instant matter is identical to the methodology used in that case where Mr. Jerominski applied the TOC method, while Mr. Williams used the QSM to compute the RCN. The depreciation methodology applied here, according to Mr. Jerominski, is also identical to the methodology applied in *Cohoes*, relying as it does on the same databases to determine the average service lives and net salvage factors for utility assets, and also recognizing the diminution of value due to negative salvage which measures the cost to retire an asset with the salvage value, if any, for that asset.

In order to value the property pursuant to the RCNLD method, Mr. Jerominski first determined the RCN of the assets. To do so, he utilized the trended original cost ("TOC") method, by trending forward the original cost amounts, as determined by a Federal Energy Regulatory Commission (FERC) Asset Valuation Account for each asset, to the taxable status dates at issue. The detailed QSM

analysis of physical assets performed by Williams, where he applied unit costs for materials and installation, added contractor overhead and profit, and indirect costs to determine the final RCN, was also utilized.

Mr. Jerominski testified specifically about his TOC RCN calculations, including, for example, his costing of CHGE's Pole Account (FERC Account 355). First he determined the surviving original costs (OC) as of each tax date by each FERC Account, which required verification that the original cost information provided by CHGE was accurate. From his interviews with CHGE accounting staff, and an analysis of such items as work orders, capitalization and plant retirement, Mr. Jerominski concluded that the OC data contained in CHGE's Continuing Property Records (CPRs) was reliable. He also confirmed to his own satisfaction that the surviving original costs recorded in the CPRs correlated with the actual physical assets present in the CHGE system on the tax dates. Then, by application of the cost translator for the proper region (determined through use of the tax and vintage date of the asset from the *Handy Whitman Index*) to the OC, RCN for each vintage and each asset was derived for each parcel and each taxable status date.

According to his testimony, upon completion of the RCN, Jerominski then determined the proper depreciation for the assets and parcels. The only two types of depreciation applicable were incurable physical depreciation for all of the parcels, and in addition, functional obsolescence for the West Newburgh Substation only. Mr. Jerominski essentially applied straight line depreciation (age divided by life, where age is the chronological or vintage age, and life was his determined average service life ["ASL"]) for each applicable FERC Account, the formula used in *The Appraisal of Real Estate*, 12th Edition. He testified that he has regularly made use of the Age/Life Method, in his work as both an appraiser and an engineer. Mr. Jerominski testified that he inspected the subject properties, and reviewed the CPRs and the drawings, and, noting that they appeared to reflect their indicated ages, he concluded that, for these assets, effective age was equivalent to chronological age (or the weighted average date of installation, for purposes of the QSM).

To determine the appropriate Average Service Lives (ASLs) for the assets, Mr. Jerominski surveyed reported service lives as set forth in several separate databases, including:

1. CHGE's own ASLs, as reported in its FERC Form-1 filings and filings with the New York State Public Service Commission.

2. A review of a 1992 AUS study for the New York State Office of Real Property Services ("ORPS"), which study reported the ASLs of all New York public utility companies (except for Consolidated Edison of New York, Inc.²)
3. A statistical analysis he conducted of the 1993/1994 and 1998/1999 AGA/EEI reports that set forth ASLs and net salvage factors reported by member utilities from all over the United States.
4. Mr. Williams' engineering opinion of useful lives for the major components at issue.

Based on all of these sources, and his thirty-eight years of appraising utility property, Mr. Jerominski arrived at what in his opinion were the appropriate ASLs for each FERC Account.

Mr. Jerominski noted in his testimony that, while he considered CHGE's reported ASLs, it was and is his opinion that he should not rely solely upon them in his calculations, since, in order to properly determine market value, an appraiser must estimate what a prospective purchaser would pay for the subject property, using whatever factors that a prospective buyer would employ. Mr. Jerominski also testified that, following deregulation, the aggregation of utility companies into larger holding companies, and the commonality of foreign ownership of utilities, required him to look at both a broader range of asset lives, and a larger data-set, in order to determine the applicable ASLs, since potential buyers would be using those same factors in their own purchase determinations.

Finally, Mr. Jerominski also testified that he chose the AGA/EEI data because the reported ASLs were based on the same type of depreciation studies that he had previously conducted for the utility industry. This data included both national and regional service lives (including the North Atlantic region where the Town of Newburgh is located.)

Having analyzed this ASL data by region and FERC Account, Mr. Jerominski then computed means and medians for each region reported in the AGA/EEI study, by each FERC Account. Although the mean and median were very close (indicating, in his opinion, the relative uniformity of the asset lives nationwide), Mr. Jerominski chose to

²Notably, Jerominski also testified that in recent cases in which he has been involved with ORPS, that agency continues to use these same ASLs in valuing property like that at issue in the instant matter.

use the median for his ASL study, to avoid distortion of the results by outliers.

Mr. Jerominski then, based not only on his thirty-eight years of conducting depreciation studies and appraisals of utility property, but also upon analysis of the several separate data bases (supra, at p. 9), his own statistical analyses, and Mr. William's separate engineering opinions of useful lives, came to his own conclusions of the appropriate ASLs by FERC Account. Having determined the aforementioned ASLs, he then went on to compute incurable physical depreciation, by vintage and by FERC Account, utilizing the depreciation formula (age divided by ASL), and then by subtracting the calculated depreciation from the previously-determined RCN, for each vintage year, for each FERC Account, and for each parcel. What remained was RCNLD.

In some instances involving some components, the actual ages of the components exceeded the estimated ASLs. In these cases, Mr. Jerominski applied a 5% floor³ to the physical depreciation calculation, recognizing that, as long as an asset remains in service, it will have some value. However, due to the impact of inflation on construction costs, after the actual ages exceed the ASLs, the value for these components nevertheless will increase over time, after the component has reached the five percent depreciation floor.

Having calculated physical depreciation, however, Mr. Jerominski also had to determine the impact, if any, of net salvage. In the depreciation studies which they routinely conduct, utilities also report salvage data, which refers to the issue that, upon retirement of an asset, a utility company knows the amount of OC retired, the removal cost of the component, and the salvage value, if any, that would be recovered for the retired asset. Utility companies report, as required, net salvage factors to both their state public service commissions and to FERC (on FERC Form-1.)

Mr. Jerominski also testified regarding the 1992 AUS study as it related to RCN salvage factors. Notably, ORPS still applies this study's net salvage factors in its depreciation computations for valuing the same type of utility property as the subject property. Both the AGE/EEI report and the 1992 AUS study demonstrated that, in the vast majority of utility FERC Accounts,

³ Mr. Jerominski noted in his testimony, however, that the issue of value determination should not be confused with reliability; thus, recognizing a five percent floor in a depreciation analysis does not suggest that the asset will fail, or that the asset is not reliable.

the cost to remove retired assets exceeds the amount received in gross salvage for those assets once removed. This is called negative net salvage value, and reflects the owner's out-of-pocket expense which exceeds any derived salvage value upon removal. Potential buyers take net salvage value into account, as they take into account any potential out-of-pocket expense associated with a prospective purchase. In addition, as utility assets gets closer to retirement, estimated out-of-pocket expenses associated with retirement of that asset also become greater.

It was his opinion that, in order to properly account for the net salvage effect, it was necessary to estimate the excess removal costs at an asset's projected retirement. Accordingly, Mr. Jerominski first determined the estimated remaining life of each vintage for each FERC Account, employing survivor curves, inflation, and present worth factors, so that he could compute out-of-pocket expenses as of the valuation date. Mr. Jerominski then deducted these present valued out-of-pocket expenses from the RCN less physical depreciation, since it represented a diminution of value.

Petitioner's Conclusions on Value

The TOC and QSM RCNs, depreciation, and net salvage, were all calculated by FERC account, by vintage year (using weighted average dates of installation, where appropriate), and by Central Hudson's location number, coordinated with each subject tax map parcel, as of each valuation date. Depreciation was calculated by dividing the age (chronological, using the weighted average date of installation) by the determined ASL for each FERC Account, and then deducting for the out-of-pocket expenses for net salvage. The sum of the many FERC Accounts in each tax year produces total RCNLD, or the value of the improvements.

Mr. Jerominski then reconciled the RCNLD by QSM (both with and without overhead and profit), and the RCNLD by TOC, to arrive at his final conclusion of value, as of each valuation date. Mr. Jerominski noted that he gave greater weight to the QSM RCNLD, because of Mr. Williams' highly detailed QSM RCN analyses. He also testified that QSM with and QSM without overhead and profit both constituted fair market value.

Christopher Harland of Capstone Appraisals, Inc. also testified for Petitioner regarding the valuation of the three land parcels underlying the three substations. Mr. Harland applied the sales comparison approach, in order to value the land and the improvements on each parcel. He was of the opinion that the improvements did not contribute any value to the parcels, since

they were outdated, abandoned utility structures that could not be built under present zoning limitations.

Mr. Harland also considered the sales comparison approach for the West Newburgh Station, an abandoned substation of approximately 1,820 square feet which is located in an area zoned residential. Although it was rated in fair condition, the improvement is not something generally bought or sold in the marketplace, and it had no windows, no electricity, no sewer hook-up, and no parking area. Town officials had confirmed to Mr. Harland that warehouse uses were not permitted, and abandonment or operation under new ownership would forfeit any "grandfather" zoning provisions. Based on these zoning limitations, he concluded that the improvements had no value, and that therefore his conclusion of value was the land value of the parcel.

Based on all of these considerations, Mr. Harland determined the following land values:

Tax Id Numbers	Property Description	2001	2002	2003	2004
43-3-1	West Balmville Substation	186,000	192,000	198,000	204,000
43-5-33	Old Balmville Substation	14,000	15,000	15,000	16,000
72-8-2	West Newburgh Substation	23,000	23,000	24,000	25,000

As petitioner notes in their post-trial memorandum, these conclusions of value exceed the Town's equalized full value for land for these parcels by a substantial margin. For whatever reason, however, and despite failing to raise any substantive issues regarding these value conclusions, the Town refused to stipulate to Mr. Harland's land values.

Petitioner's Total RCNLD/Market Values

Tax Id#	2001	2002	2003	2004
1002	1,100,000	1,050,000	1,000,000	950,000
1012	200,000	190,000	195,000	663,930
1032	350,000	310,000	300,000	300,000
1051	500,000	475,000	450,000	425,000
1061	225,000	210,000	205,000	205,000

1071	200,000	175,000	140,000	120,000
1081	400,000	390,000	380,000	370,000
1103	77,000	70,000	63,000	55,000
1101	185,000	165,000	150,000	130,000
1023	200,000	190,000	190,000	190,000
1022	325,000	320,000	315,000	315,000
2013	975,000	950,000	925,000	925,000
43-3-1	2,136,000	2,092,000	2,048,000	2,004,000
43-5-33	114,000	115,000	125,000	135,000
72-8-2	48,000	45,000	46,000	47,000

Petitioner's Post-Trial Arguments

Petitioner generally argues that the afore-mentioned proof adequately rebuts the presumption of validity of the assessments, in that its appraisal was based upon standard and accepted appraisal techniques and, therefore, meets the substantial evidence standard required. CHGE further asserts that, since respondents' own proof demonstrates that petitioner's property is overassessed, this is an admission against interest and in and of itself establishes petitioner's prima facie case, or, in any event, establishes the maximum value for the property (the ceiling).

CHGE also argues that its appraisal properly applied the Reproduction Cost New Less Depreciation (RCNLD) methodology, by properly computing RCN according to the Trended Original Cost (TOC) and/or Quantity Survey (QSM, Sticks N' Bricks) Method, as required by the asset, and properly calculated physical depreciation of those assets. Finally, Petitioner urges the Court to find that respondent's expert's appraisal is so lacking in documentation, so incorrect in methodology, and so filled with error, that it must either be stricken or, at the very least, simply dismissed entirely.

Respondent's Appraisal Values and Arguments

George Sansoucy testified as respondent Town's expert on value. Mr. Sansoucy is a New Hampshire engineer who in the past has designed, constructed and operated utility properties, including transmission and distribution assets, and has also

appraised and valued utility properties similar to those Petitioner in this case. Mr. Sansoucy calculated RCNLD, deriving reproduction costs for the electrical assets solely via the TOC method. He reviewed the books of CHGE, both to determine the original costs incurred by CHGE, and the dates on which those costs were incurred. He then simply trended these original costs forward to each taxable status date, in order to determine RCNLD for those years.

For the gas transmission assets, he instead relied on QSM, since he found errors in CHGE's Continuing Property Records (CPRs). He also performed a check on the calculated trend figures, sampling some of the larger properties and roughly calculating RCN by QSM. He testified, however, that he relied upon TOC to derive RCN because, in his opinion, the assets were mature, unchanging technology with a well established history of costs for materials and installation. He asserted that this had not been possible in prior cases in which he had calculated RCN by trending, generally due to the absence of reliable records of the many changes or upgrades that occurred during the lives of the trended assets. As respondent has noted, the TOC values calculated by CHGE and the Town were relatively close in value.

To determine depreciation, Mr. Sansoucy applied the Age-Life methodology, by determining the ages of the property from CHGE's records, and then relating those ages to the anticipated lives of the asset. Anticipated lives are in turn calculated by analysis of CHGE's estimated lives, as reported (for regulatory purposes) on CHGE's FERC Form 1 Reports. However, since Average Service Lives (ASLs) are filed for rate making purposes, they include not only all forms of depreciation but also whatever negative salvage their regulators allow. This makes ASLs shorter than the actual potential lives of the property (i.e. assets may reach the end of their estimated ASLs, yet CHGE still projects additional years of remaining life). Sansoucy further testified that ASLs include physical factors, functional factors and economic factors, while ASLs for valuation purposes measure only physical depreciation, since the assets do not experience functional or economic obsolescence.

He also noted that utilities commonly reflect ASLs by their retirement of assets, which can be caused by not only physical factors such as wear and tear but also functional factors like obsolescence or even management discretion. Since ASLs include all forms of depreciation, Mr. Sansoucy opined that he could not use it by itself to determine the useful lives of the CHGE assets. Rather, he took the reported ASLs, and then considered the actual ages and experience of CHGE's assets, in this case, including assets which had already exceeded their estimated service lives. In particular, according to Mr. Sansoucy, he considered not only

the regulatory service lives of the assets, but also their ages and their observable conditions, including the age of assets within that class of property located in the Town of Newburgh. Notably, he declined to consider the ASLs of other companies as compared to those of CHGE. Through this analysis, Mr. Sansoucy derived for each of the assets at issue his conclusion of useful life, as contrasted with CHGE's ASL.

Mr. Sansoucy further testified that he also addressed the issue of valuation of property which remains in place, fully functioning, but which has reached the end of its expected life. Mr. Sansoucy chose to employ a 20% floor in value, to reflect the fact that utility property must be capable of operating without providing a risk to the public, except where the asset would be abandoned by CHGE.

Respondent's Post Trial Arguments

The Town initially moved to strike petitioner's appraisal, asserting that Jerominski is unqualified to testify to RCNLD computations since he is a real estate appraiser and not an architect, builder, contractor, or developer, and, while an engineer, has never practiced as one. The Town also argued that Jerominski's appraisal was filled with a variety of errors.

Generally, the Town also argues that petitioner failed to rebut the presumption of validity attaching to the assessment; that petitioner's depreciation analysis is in several ways flawed, and that petitioner's valuation of the West Newburgh substation was erroneous as a matter of law.

CONCLUSIONS OF LAW

THE PRESUMPTION OF VALIDITY

Respondents argue that the petitioner's valuation evidence failed to rebut the presumption of validity of the assessments, in that the petitioner's appraisal was not based upon standard and accepted appraisal techniques and, therefore, did not meet the substantial evidence standard. A party seeking to overturn an assessment must first overcome this presumption of validity through the submission of substantial evidence (see, e.g., *Matter of FMC Corp. [Peroxygen Chems. Div.] v. Unmack*, 92 N.Y.2d 179, 187 [1998]) ("In the context of tax assessment cases, the 'substantial evidence' standard merely requires that petitioner demonstrate the existence of a valid and credible dispute regarding valuation. The

ultimate strength, credibility and persuasiveness are not germane during this threshold inquiry...a court should simply determine whether the documentary and testimonial evidence proffered by petitioner is based on 'sound theory and objective data'"); see also, *Matter of Niagara Mohawk Power Corp. v Assessor of the Town of Geddes*, 92 N.Y.2d 192, 196, [1998] ("In the context of a proceeding to challenge a tax assessment, substantial evidence proof requires a detailed, competent appraisal based on standard, accepted appraisal techniques and prepared by a qualified appraiser"); 22 N.Y.C.R.R. 202.59(g)(2) (appraisal reports utilized in tax assessment review proceedings "shall contain a statement of the method of appraisal relied on and the conclusions as to value reached by the expert, together with the facts, figures and calculations by which the conclusions were reached").

OVERCOMING THE PRESUMPTION OF VALIDITY

Notwithstanding the petitioners' accurate observation that, based on respondents' own admission, as contained in their appraisal report, that for each year in question respondents substantially over-assessed all of the parcels (except 1012, 1061, and 1071, for which they provided no appraisal values) (see, e.g., *Matter of Arsenal Housing Associates v. City Assessor of City of Watertown*, 298 A.D.2d 830 [4th Dept.2002]; *Matter of South Slope Holding Corp. v. Comstock*, 280 A.D.2d 883 [4th Dept.2001] ("We conclude that the court was required to consider the entire record and that respondents' appraisals, received in evidence, constituted admissions against interest by respondents that the assessments were excessive to the extent that they exceeded those appraisals"), the Petitioners must nevertheless, through the submission of substantial evidence, overcome the presumptive validity of the disputed assessments (see, e.g., *Matter of Niagara Mohawk Power Corp. v. Assessor of the Town of Geddes*, *supra*, ("In the context of a proceeding to challenge a tax assessment, substantial evidence proof requires a detailed, competent appraisal based on standard, accepted appraisal techniques and prepared by a qualified appraiser").

A VALID DISPUTE EXISTS

This Court finds that the Petitioner has submitted substantial evidence based upon " sound theory and objective data " consisting of the appraisals and the testimony of licensed engineer Paul Williams and engineer and appraiser Mr. Charles Jerominski, and has demonstrated the existence of a valid dispute concerning the propriety of the assessments.

THE CEILING AND THE FLOOR

The Court finds that the Ceiling for each parcel, based on the lower of: (1) the actual assessments set by the respondent Town's Assessor, as set forth above, and the corresponding market values from those assessments based on the appropriate stipulated-to-equalization rates, and (2) the values set forth in its appraisal, above which the parcels may not be valued, is as follows:

Ceiling

Tax Id#	2001	2002	2003	2004
1002	1,918,383	1,943,090	1,891,821	1,906,552
1012	562,843	537,563	589,965	663,930
1032	306,991	311,791	305,889	312,661
1051	746,593	713,221	717,047	717,124
1061	340,152	324,874	356,543	401,244
1071	690,004	659,013	723,254	813,930
1081	699,314	708,673	690,153	695,683
1103/1101 ⁴	642,627	647,633	626,313	628,217
1023/1022	548,836	558,116	549,476	563,621
2013	2,090,468	1,996,576	2,191,202	2,465,920
43-3-1	2,488,714	2,800,604	3,060,520	3,314,721
43-5-33	313,235	320,384	307,966	310,633
99-5-600	267,105	267,734	208,444	234,577
72-8-2	316,322	302,115	331,565	373,134

Floor

Likewise, the Floor for each parcel, based on the higher of: (1) the values, if any, set forth in the Petitioner's petition⁵, and (2) the values set forth in its appraisal, below which the parcels may not be valued, is as follows:

Tax Id#	2001	2002	2003	2004
1002	1,100,000	1,050,000	1,000,000	950,000
1012	200,000	190,000	195,000	195,000
1032	350,000	310,000	300,000	300,000
1051	500,000	475,000	450,000	425,000
1061	225,000	210,000	205,000	205,000
1071	200,000	175,000	140,000	120,000
1081	400,000	390,000	380,000	370,000
1103/1101	262,000	235,000	213,000	185,000
1023/1022	525,000	510,000	505,000	505,000
2013	975,000	950,000	925,000	925,000
43-3-1	2,136,000	2,092,000	2,048,000	2,004,000
43-5-33	114,000	115,000	125,000	135,000
999-5-600	70,000	65,000	60,000	55,000
72-8-2	48,000	45,000	46,000	47,000

⁴ The Court adopts petitioner's combination of values for parcels 1103 and 1101, and parcels 1023 and 1022, respectively, since the individual parcels, when combined, equal 100% of the two transmission lines involved (Marlboro to West Balmville and West Balmville to Chadwick Lake, respectively.)

⁵ Petitioner in this matter did not set forth any values in the petitions for the several tax years.

Valuation Methodologies⁶

Valuation generally involves the use of one of several recognized methods or approaches: cost, sales comparison, or income capitalization methods (*The Appraisal of Real Estate*, p. 62). Typically, valuation of so-called "specialty properties" is by the cost method. As the Court stated in *Niagara Mohawk Power Corp. v. Assessor of Town of Geddes*, *supra*, at p. 196:

"specialty" property is one that "is uniquely adapted to the business conducted upon it or use made of it and cannot be converted to other uses without the expenditure of substantial sums of money" (*Matter of Great Atl. & Pac. Tea Co. v Kiernan*, 42 NY2d 236, 240 [1977]; see also, *Matter of Allied Corp. v Town of Camillus*, 80 NY2d 351, 357 [1992]; *Matter of Saratoga Harness Racing v Williams*, 91 NY2d 639 [1998].)

The *Geddes* Court articulated four criteria to determine whether a property was a "specialty":

"(a) the improvement must be unique and must be specially built for the specific purpose for which it is designed; (b) there must be a special use for which the improvement is designed and the improvement must be so specially used; (c) there must be no market for the type of property and no sales of property for such use; and (d) the improvement must be an appropriate improvement at the time of the taking or assessment and its use must be economically feasible and reasonably expected to be replaced" (*Matter of Allied Corp. v Town of Camillus*, *supra*, at 357).

Geddes, *supra*, at 196-7.

Property which is properly categorized as a specialty cannot be valued by using the comparable sales approach, since, by definition, there is no market for the property. Instead, the appropriate methodology to be used by the appraiser is the

⁶ As set forth in greater detail below, the petitioner valued the land for parcels 43-3-1, 43-5-33, and 72-8-2 (West Balmville Substation, Old Balmville Substation, and West Newburgh Substation, respectively) according to the sales comparison method, while respondent put in no proof on the issue at all.

reproduction cost less depreciation approach (RCNLD) [see, *Matter of Great Atl. & Pac. Tea Co. v Kiernan*, supra; *Matter of Saratoga Harness Racing v Williams*, supra].

The *Geddes* Court cautioned, however, "that the reproduction cost method of valuation 'may result in serious overvaluation of the property due to rising construction costs and its failure to adequately account for factors such as functional obsolescence and physical deterioration' (*Matter of Great Atl. & Pac. Tea Co. v Kiernan*, supra) [and] concluded that it should be 'utilized only in those limited instances in which no other method of valuation will yield a legally and economically realistic value for the property' (*Geddes*, supra, at 197).

Appropriate Valuation Methodology

Respondent's Appraisal Methodology for RCN-TOC

The Court notes, as a preliminary matter, that Mr. Sansoucy has previously been found, by other courts, to lack the required expertise to qualify as an appraiser of utility property. The trial court in *Niagara Mohawk Power Corporation v. City of Cohoes* (Supreme Court, Albany County, Casey, J.H.O., January 21, 2000), found that Mr. Sansoucy lacked "qualified expertise" and struck his appraisal. This ruling was upheld by the Third Department, *Cohoes*, supra, at 727, which found:

Despite his Master's degree in civil engineering and his prior experience preparing valuation reports for power generation facilities, Sansoucy is not licensed as an appraiser in New York, is not a member of any appraisal organizations, and has never trained under the supervision of a qualified appraiser.

Similarly, this Court in *Orange & Rockland Utilities, Inc. v. Haverstraw*, 12 Misc.3d 1194A (Supreme Court, Rockland County, Dickerson, J., August 11, 2006; hereinafter *Bowline*), examined Sansoucy's qualifications to calculate RCN on electric generating assets. In *Bowline*, this Court noted that Sansoucy had previously stated his opinion that there were several problems with employing TOC methodology, although he had failed to address those problems in utilizing TOC in *Bowline*. For example, in *Niagara Mohawk Power Corporation v. Town of Bethlehem*, 225 A.D.2d 841 (3d Dept. 1996), Mr. Sansoucy had expressed concern that TOC might trend forward

unidentified intangible business assets in the original cost, making the trended costs inaccurate, but in *Bowline* he did not appear to have segregated any intangible business assets. Prior to *Bowline*, he had also stated (in *Cohoes*, *supra*) that the Handy Whitman Indices are unreliable to calculate cost, in that they do not account for various soft costs, but he, nevertheless, employed them in *Bowline*.

Further, while Mr. Sansoucy, previously in *Bethlehem*, *supra*, had calculated and included the original cost records not containing capital costs disallowed by regulatory agencies or by agreements in rate cases, he apparently did not determine the presence or absence of such costs in *Bowline*. In fact, this Court in *Bowline*, found that Mr. Sansoucy did not investigate Orange & Rockland's original cost data at all; that he ignored numerous drawings and prints which he had been supplied with; that he failed to verify that the trended original costs reflected actual construction costs on the tax status dates at issue in *Bowline* (*cf.*, *Niagara Mohawk Power Corporation v. Town of Bethlehem*, *supra*, at 844 ["... petitioner's appraiser erroneously relied on the Handy-Whitman Index of Public Utility Construction Costs in trending the vintage costs to determine the reproduction cost new . . . the index was not applicable because it reflected only average national trends and not necessarily local trends. Notably, petitioner's appraiser testified that he did not know whether the trends recited in the index applied to the Bethlehem area; he also indicated that he did not check local experience."]). In addition, this Court recognized that Mr. Sansoucy had never built or participated in the construction of an oil/gas steam turbine generation station such as that at issue in *Bowline*. For all these reasons, this Court in *Bowline* rejected the Respondents' RCN methodology.

Petitioner has also asserted that Mr. Sansoucy, as a matter of law, lacks the qualifications required to properly offer an opinion as to RCNLD. As CHGE properly points out, the cost approach must be employed by an architect, builder or engineer that has current personal knowledge or experience of the applicable construction costs for the subject property to compute reproduction cost new ("RCN"). (*see*, *Tenn. Gas Pipeline Co. v. Town of Sharon Bd. of Assessors*, 298 A.D.2d 758 [3rd Dept. 2002]). There, the Third Department stated:

Because these proceedings involve the valuation of pipelines, which are considered "specialty" properties (*see*, *Matter of Tenneco, Inc. - Tennessee Gas Pipeline Div. v Town of Cazenovia*, 104 AD2d 511, 512), the

parties' appraisers properly applied the reproduction cost new less depreciation method of valuation (see, *Matter of Semple School for Girls v Boyland*, 308 NY 382, 388-389). Application of this method requires "a working knowledge of current construction costs and methods and the ability to perform a detailed analysis of the structure being appraised" (*Matter of Guilderland Ctr. Nursing Home v Town of Guilderland Bd. of Assessment Review*, 195 AD2d 902, 903). Typically, then, an appraisal of a specialty property will be conducted by an architect, engineer, builder or other professional with expertise in the relevant construction methods and costs (see *id.* at 903-904).

Petitioner's appraiser was a senior vice-president of a national appraisal firm who specialized in appraisals of utility properties. He earned an electrical engineering degree in 1956 and is registered as an engineer in three states, although he acknowledged that he has never practiced as a professional engineer. He is also a certified appraiser in three states and has appraised many pipelines throughout the United States. However, he is not licensed as an appraiser in New York, has never been involved in the construction of any pipeline or similar property and has no independent knowledge of New York pipeline construction costs. In fact, his experience with cost estimating for construction projects was limited to work performed in the 1960s. He readily admitted that he is unfamiliar with local building costs and could not independently verify the construction costs used in his own appraisal. Given these limitations, we cannot say that Supreme Court erred in concluding that petitioner's appraiser did not possess sufficient knowledge of current construction costs to determine the value of petitioner's pipelines (see, *Matter of Niagara Mohawk Power Corp. v City of Cohoes Bd. of Assessors*, 280 AD2d 724, 726-727, *lv denied* 96 NY2d 719; *Matter of Fistrav-Del Holding Corp. v Assessor for Town of Colonie*, 235 AD2d 660, 662; *Matter of Guilderland Ctr. Nursing Home v Town of*

Guilderland Bd. of Assessment Review, supra at 903-904).

While Mr. Sansoucy is an engineer, he admittedly is not an architect or builder, nor has he practiced or even had any experience as an engineer with respect to the construction of electric and natural gas transmission lines or substations. Neither did he have any recent experience in costing, bidding, designing, managing, supervising or otherwise financing, constructing or operating assets such as those at issue before the Court.

In his testimony, for example, he was unable to demonstrate current or actual knowledge of construction costs for these assets, as he admitted lacking any actual experience for bidding, designing, managing or otherwise constructing such property between 2001 and 2004. Further, neither is he a member of any professional appraisal organization (either the Appraisal Institute ("MAI") or the American Society of Appraisers ("ASA")). While he did claim that he is certified as an "appraiser" by the New Hampshire Department of Revenue Administration, the applicable regulations appear merely to demonstrate that he is certified as an assessor for the State of New Hampshire.

Mr. Sansoucy also made what appears to be several errors undermining his qualifications as an engineer and casting doubt on his suitability to perform an RCNLD analysis. For example, although he testified that he understood the distinction between special and non-special franchise property, Mr. Sansoucy was unable to distinguish between portions of the natural gas pipeline that were either special or non-special franchise property. He also incorrectly identified a schematic design of the natural gas transmission pipeline, overlaid on an aerial photograph, as an "as built" drawing. Mr. Sansoucy further ignored the concept of "wire miles", despite the fact that his cost source, *R.S. Means*, provided costs in dollars per wire mile. And he ignored variations in wall thickness in the natural gas pipeline, and used *R.S. Means* costs for **distribution** pipelines, although the subject pipeline was a **transmission** pipeline (and thus completely different).

In short, while respondents' engineer may have constructed sewer lines, and re-built low head and small hydroelectric stations more than twenty years ago, he conceded in his testimony that he had not been retained or hired to design, construct, or manage the construction of improvements similar to those at issue herein in the State of New York, within the past fifteen years; to prepare a bid or cost estimate for construction of such assets during such time frame; or to prepare drawings (architectural, mechanical, electrical, shop or other) for transmission lines (either gas or electric) or substations in New York at any time in the past

fifteen years.

Finally, Mr. Sansoucy relied **solely** on TOC to calculate RCN, a methodology frequently disapproved and, in particular, disapproved with respect to Mr. Sansoucy himself (see, *Niagara Mohawk Power Corporation v. Town of Bethlehem*, *supra*; *Cohoes*, *supra*; *Bowline*, *supra*). Absent nearly any of the qualifications required, or the knowledge of current construction costs in New York, or employment of a proper and thorough check on his TOC (i.e. by comprehensively employing QSM also), this Court declines to accept Mr. Sansoucy's employment of the TOC approach.

Petitioner's Appraisal Methodology for RCN-TOC and/or QSM

As set forth in greater detail above, CHGE's appraisal team consisted of Kleinschmidt Associates (KA) by engineer Paul Williams, and AUS Consultants by engineer and appraiser Charles Jerominski. The former calculated RCN by QSM, and supplied his calculations, both with and without contractor's overhead and profit, to the latter, who separately calculated RCN pursuant to TOC, and then depreciated those 3 calculations. Given the above-expressed concerns raised regarding TOC calculations, as possibly based on old and inaccurate costs, the Court elects to accept KA/Williams' calculations of RCN by QSM.

However, respondent has argued that William' RCN calculations without contractor's overhead and profit are flawed, to the extent they assume that construction work would routinely be performed "in-house", i.e. by CHGE employees, and not contracted out. The Court thus, while accepting Williams' QSM calculation for RCN, elects to average those with, and those without, contractor's overhead and profit, to account for the strong possibility that some significant percentage of the construction would in fact be contracted out, and thus become subject to contractor's overhead and profit.

The Court's RCN by QSM **(with 50% contractor overhead and profit)**

Tax Id#	2001	2002	2003	2004
1002	4,414,349	4,530,447	4,679,713	4,940,707
1012	1,245,445	1,271,066	2,720,4440	1,470,110

1032	1,191,426	1,220,924	1,294,920	1,365,983
1051	1,353,598	1,369,109	1,299,278	1,427,435
1061	1,070,902	1,091,983	1,117,513	1,142,180
1071	1,164,438	1,196,508	1,274,150	1,491,374
1081	1,620,691	1,660,356	1,746,176	1,844,635
1103/1101	1,436,360	1,461,929	1,568,228	1,667,355
1023/1022	1,834,245	1,881,678	2,002,834	2,128,087
2013	2,100,100	2,125,000	2,150,000	2,200,000
43-3-1	6,672,096	6,689,083	6,780,823	7,019,306
43-5-33	809,496	835,455	846,268	878,512
999-5-600	322,728	329,748	337,324	350,483
72-8-2	277,555	304,534	292,965	299,986

Based on the aforementioned assumptions, the Court calculates RCN, by QSM⁷, for the tax status years, and parcels, involved, to be:

Tax Id#	2001	2002	2003	2004
1002	4,414,349	4,530,447	4,679,713	4,940,707
1012	1,245,445	1,271,066	2,720,440	1,470,110
1032	1,191,426	1,220,924	1,294,920	1,365,983
1051	1,353,598	1,369,109	1,399,278	1,427,435
1061	1,070,902	1,091,983	1,117,513	1,142,180
1071	1,164,438	1,196,508	1,274,150	1,491,374
1081	1,620,691	1,660,356	1,746,176	1,844,635
1103/1101	1,436,360	1,461,929	1,568,228	1,667,355
1023/1022	1,834,245	1,881,678	2,002,834	2,128,087
2013	2,100,100	2,125,000	2,150,000	2,200,000
43-3-1	6,672,096	6,689,083	6,780,823	7,019,306
43-5-33	809,496	835,455	846,268	878,512

⁷RCN is computed by TOC for parcel 2013, the Cocheton to Highland Natural Gas Line, for the reasons set forth previously.

999-5-600	322,728	329,748	337,324	350,483
72-8-2	277,555	304,534	292,965	299,986

Petitioner's Appraisal Methodology for Land

As set forth previously, CHGE's appraiser calculated land values for 43-3-1, 43-5-33, and 72-8-2 (West Balmville Substation, Old Balmville Substation, and West Newburgh Substation) according to the sales comparison method, while the Town provided no proof on the issue at all. Having conducted a thorough analysis of the comparable properties utilized and the adjustments thereto, the Court adopts petitioner's calculations for the land portions of those parcels (to which the additional calculations set forth below and above for the improvements on those parcels are added):

Tax Id Numbers	Property Description	2001	2002	2003	2004
43-3-1	West Balmville Substation	186,000	192,000	198,000	204,000
43-5-33	Old Balmville Substation	14,000	15,000	15,000	16,000
72-8-2	West Newburgh Substation	23,000	23,000	24,000	25,000

Petitioner's Appraisal Methodology for Depreciation

As set forth in greater detail above, Mr. Jerominski calculated depreciation for the different assets and parcels by applying straight line depreciation for each applicable FERC Account. He calculated incurable physical depreciation for all of the parcels, and also considered functional obsolescence for the West Newburgh substation only. Mr. Jerominski inspected the subject properties, and reviewed the CPRs and the drawings. He also surveyed reported service from several separate databases, including: CHGE's own ASLs, as reported in its FERC Form-1 filings and filings with the New York State Public Service Commission; the 1992 AUS study conducted for ORPS; a New York public utility company survey; a statistical analysis of a 1993/1994 and a 1998/1999 AGA/EEI report; and Mr. Williams' engineering opinion of useful lives.

Where actual ages of the components exceeded the estimated ASLs, Mr. Jerominski applied a 5% floor to the physical depreciation calculation, with the result that the value for these components would increase over time, after the component has reached the five percent depreciation floor. Mr. Jerominski also determined net salvage, for the cost of assets; the salvage value, if any, upon removal; and excess removal costs at an asset's projected retirement.

Respondent's Appraisal Methodology for Depreciation

As also noted in greater detail above, Mr. Sansoucy also applied the Age-Life methodology, by determining the ages of the property from CHGE's records, and then relating those ages to the anticipated lives of the asset, calculated by analysis of CHGE's estimated lives, as reported (for regulatory purposes) on CHGE's FERC Form 1 Reports. He declined, however, to employ CHGE's ASLs as reported; rather, he took the reported ASLs, and then considered the actual ages and experience of CHGE's Town assets, including assets which had already exceeded their estimated service lives, and their observable conditions. He also declined to consider the ASLs of other companies over that of CHGE. Through this analysis, Mr. Sansoucy derived for each of the assets at issue his conclusion of useful life, as opposed to CHGE's ASL.

The Court's Depreciation and Fair Market Value

As the Third Department noted in *Cohoes, supra*, 727-28:

The physical depreciation calculations in the AUS report are not flawed. Based on the straight line depreciation method, the AUS report's calculations were made after a review of, *inter alia*, both regional and national depreciation statistics databases, service life figures reported in Federal documents and the analysis of service lives contained in the KA report which were based upon the personal observations of KA's engineer. As this method has previously been permitted (see generally, *Matter of City of Troy v Kusala*, 227 AD2d 736, 740-741, *supra*; *Matter of Tennaco, Inc. v Town of Cazenovia*, 104 AD2d 511, 513), we decline further review.

In addition, this Court noted in *Bowline, supra*, that:

For physical life Mr. Sansoucy testified that he determined "class lives". He established that all original costs recorded in FERC Account 311 [structures and improvements] had a "class life" of ninety years. All other FERC accounts that comprised Bowline's real property had a "class life" of sixty years. Mr. Sansoucy's basis for these two class lives was his "experience" and a two-hour inspection of the Bowline station. Mr. Sansoucy did not conduct a review of national, regional, or New York State databases reporting FERC account average service lives. He admitted that his own physical life sheet provided for component physical lives that were shorter than his determined class life.

Failure To Apply Individual Component Physical Life

Had Mr. Sansoucy applied an individual component physical life for each individual component, as opposed to "class lives", he would have increased his deduction for incurable physical depreciation. Mr. Sansoucy's determinations of two class lives of ninety and sixty years were without any evidentiary support....

The *Bowline* Court then contrasted that petitioner's depreciation methodology

To determine the appropriate ASL for each FERC account, Mr. Remsha investigated published information, reviewed Mr. Crean's physical assessments , discussed Bowline's operations and components with its manager and engineers and applied his experience. Mr. Remsha reviewed the American Gas Association and Edison Electric Institute ["AGA/EEI"], the FERC Form 1 filings by O&R, Central Hudson Gas & Electric, Inc. and Consolidated Edison Company of New York, Inc. Mr. Remsha's team from AAA spent several days inspecting Bowline and conducting interviews with the Bowline plant manager and engineers at Bowline.

However, this Court also notes that the Third Department has ruled somewhat inconsistently with *Cohoes in Matter of Niagara Mohawk Power Corp. v. Town of Moreau*, 46 A.D.3d 1147, (3rd Dept. 2007). Regarding ASLs, the Court in *Moreau* was critical of the

perceived failure of petitioner's expert in that case to place sufficient reliance on that particular utility's own reported service lives, and the remaining lives of those assets. The Court stated:

While petitioners correctly assert that straight-line depreciation has been considered appropriate when well-founded and supported by the evidence, such method must be applied after a review of pertinent information such as regional and national statistics, analysis by engineers based upon personal observation and, particularly, service lives reported by utilities (see, *Matter of Niagara Mohawk Power Corp. v City of Cohoes Bd. of Assessors*, 280 AD2d 724, 727-728, 720 N.Y.S.2d 241 [2001], lv denied 96 NY2d 719, 759 N.E.2d 370, 733 N.Y.S.2d 371 [2001]; *Matter of Tenneco, Inc. - Tennessee Gas Pipeline Div. v Town of Cazenovia*, 104 AD2d 511, 513, 479 N.Y.S.2d 587 [1984]). However, such method is deficient when the ASLs used in the calculations do not take into account the "remaining lives" of assets, particularly when the result is that the estimated service lives are shorter than the actual age of functioning assets, resulting in the assignment of no value to property that remains operable after its projected retirement date (see, *Matter of City of Troy v [**1150] Kusala*, 227 AD2d 736, 740-741, 642 N.Y.S.2d 717 [1996], lv denied 89 NY2d 801, 675 N.E.2d 1231, 653 N.Y.S.2d 278 [1996]; see also, *Matter of Niagara Mohawk Power Corp. v Town of Marcy*, 256 AD2d 1155, 1156, 682 N.Y.S.2d 770 [1998], lv denied, 688 NYS2d 372 [1999]; *Niagara Mohawk Power Corp. v Town of Moreau*, Sup Ct, Saratoga County, June 18, 1999, Williams, J., slip op at 14). As such, a utility's own assessment of its particular assets is an indispensable source of data for computing ASLs for the purpose of calculating depreciation (see, *Matter of Niagara Mohawk Power Corp. v Town of Bethlehem Assessor*, 225 AD2d 841, 844, 639 N.Y.S.2d 492 [1996]; *Niagara Mohawk Power Corp. v Town of Moreau*, slip op at 14).

Moreau, supra, at 1149-50.

The Court in *Moreau* noted in particular that the calculated ASLs were exceeded by those reported by that utility by some 30% to 50%.

Further, the *Moreau* Court was also critical of the employment by petitioner's expert of a 5% depreciation floor. The Court noted:

We also find problematic petitioners' calculations with regard to both residual value and negative net salvage value. Petitioners' experts used a depreciation floor of 5% good, but demonstrated no basis for arriving at the use of that percentage. MV Valuation's report stated that the 5% residual value was "[b]ased on our appraisal judgment and experience" and "conversations with Kleinschmidt," but provided no empirical basis for selecting that figure. The Town respondents' expert, in contrast, opined at trial that the proper depreciation floor of these particular assets was 20%. Likewise, petitioners assigned a negative 5% net salvage value across the board to all assets, providing no empirical basis for doing so. In stark contrast, Niagara Mohawk's own reported salvage factors ranged from negative 25% to positive 10%, and the Town respondents' expert opined that, based in part upon Niagara Mohawk's projections, he estimated varying net salvage values from negative 25% to zero.

To be sure, the *Cohoes* Court addresses some of these issues, and *Cohoes* was cited favorably in *Moreau*. Regarding depreciation, for example, *Cohoes* noted (at 727-28):

The physical depreciation calculations in the AUS report are not flawed. Based on the straight line depreciation method, the AUS report's calculations were made after a review of, *inter alia*, both regional and national depreciation statistics databases, [***11] service life figures reported in Federal documents, and the analysis of service lives contained in the KA report [*728] which were based upon the personal observations of KA's engineer. As this method has previously been permitted (see generally, *Matter of City of Troy v Kusala*, 227 AD2d 736, 740-741, *supra*; *Matter of Tennaco, Inc. v Town of*

Cazenovia, 104 AD2d 511, 513), we decline further review.

In addition, regarding net salvage value, the *Cohoes* Court held (at 728):

Nor do we find error in allowing deductions for net salvage value under the RCNLD valuation, as stipulated, since depreciation must also reflect that the value of a property will decrease when the cost to remove equipment at its retirement exceeds the amount that the equipment can be sold for on the open market.

Nevertheless, based on all of the aforementioned cases, while the Court elects to reject Sansoucy's methodology and to employ instead the depreciation methodology used by petitioner, the Court does so by recognizing both the likelihood that ASLs actually exceed those determined by petitioners (by as much as some 40%), and that petitioner's calculated 5% depreciation floor is too low as well. Depreciation, therefore, is determined to be approximately 10% less than that suggested by petitioner.

The Court therefore, based on the above factors and calculations, and in conjunction with the land values calculated separately for parcels 43-3-1, 43-5-33, and 72-8-2, determines depreciation, RCNLD, and therefore market values, generally rounded⁸, to be as follows:

Tax Id#	2001	2002	2003	2004
1002	1,506,000	1,411,000	1,356,000	1,271,000

⁸ Respondents ceiling numbers for 2002 through 2004 are not rounded.

⁹ Note that the petitioner is bound by its "floor" value for 2001, while the respondent is likewise bound by its ceiling values for the remaining years.

¹⁰ Note that the petitioner is bound by its "floor" values for each of the tax years at issue.

¹¹ Note that the petitioner is bound by its "floor" values for tax years 2002, 2003, and 2004.

¹² Note that the petitioner is bound by its "floor" values for tax years 2003 and 2004.

1012	264,000	258,000	270,000	274,000
1032	350,000	311,791	305,889	312,661 ⁹
1051	622,000	600,000	583,000	568,000
1061	279,000	273,000	272,000	262,000
1071	209,000	202,000	194,000	181,000
1081	549,000	513,000	503,000	471,000
1103/1101	346,000	310,000	299,000	264,000
1023/1022	525,000	510,000	505,000	505,000 ¹⁰
2013	1,201,000	1,210,000	1,320,000	1,275,000 ¹¹
43-3-1	2,263,000	2,092,000	2,048,000	2,004,000 ¹²
43-5-33	122,000	124,000	125,000	135,000
999-5-600	92,000	87,000	78,000	73,000
72-8-2	52,000	54,000	53,000	53,000

which values are well within the range of testimony (see, *Rose v. State*, 24 N.Y.2d 80 [1969]).

Upon the above findings, it is hereby

ORDERED, that the Petitions, with costs [R.P.T.L. §722(1)], are sustained to the extent indicated above, the assessment rolls are to be corrected accordingly, and any overpayments of taxes are to be refunded with interest.

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

Settle Judgment on notice.

Dated: White Plains, New York
December 23, 2008

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

Lawrence A. Zimmerman, Esq.
Hiscock & Barclay, LLP

Attorney for Petitioner
50 Beaver Street
Albany, New York 12207

Patrick L. Seely, Jr., Esq.
Hacker & Murphy, LLP
Attorneys for Respondents
7 Airport Park Boulevard
PO Box 104
Latham, New York 12110